

**STATE LANDS COMMISSION**

**TRANSCRIPTS**

**OCTOBER 29, 1990**

**AND**

**DECEMBER 12, 1990**

**CERTIFIED  
COPY**

BEFORE THE STATE LANDS COMMISSION  
OF THE  
STATE OF CALIFORNIA

IN THE MATTER OF )  
 )  
MEETING OF THE )  
STATE LANDS COMMISSION ;  
\_\_\_\_\_ )

Public Hearing on  
Agenda Items No. 34,  
No. 36, and No. 40

TRANSCRIPT OF PROCEEDINGS

October 29, 1990

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1 BEFORE THE STATE LANDS COMMISSION

2 Los Angeles, California

3 October 29, 1990

4

5

-- P R O C E E D I N G S --

6

7 CHAIR TUCKER: Good afternoon. This is the State  
8 Lands Commission. We'll start our meeting with the approval of  
9 the minutes of the previous meeting and then I'll explain  
10 briefly the procedures we're going to follow this afternoon for  
11 everybody's benefit.

12 DEPUTY COMMISSIONER STANCELL: I move the minutes  
13 of the last meeting.

14 DEPUTY COMMISSIONER MANNING: Second.

15 CHAIR TUCKER: Okay, minutes are approved.

16 Let me just briefly explain the procedure we'll  
17 follow. If anybody would like to speak on any of the items,  
18 we'd appreciate it if you would fill out a little form that we  
19 have up here -- it looks like this-- so that way I know who,  
20 and will be calling upon you.

21 We have a Consent Calendar and normally we'll  
22 stick up the Consent Calendar as an entire calendar without  
23 discussion of any of the particular items, so if you are here  
24 on any item that's on the Consent Calendar, you should make  
25 sure and let us know and we'll take it off the calendar so you

1 can have an opportunity to discuss it.

2 This afternoon, according to the procedures that  
3 govern the Commission, just Mr. Stancell and Mr. Manning will  
4 be voting. So that's why there will be just two votes on each  
5 item.

6 Okay, does anybody have anything to say about the  
7 Consent Calendar, while we're off-taking items under C01, Items  
8 N and O, Item C11 and Item C13, so those items are taken off  
9 the Consent Calendar. With those exceptions --

10 MR. WARREN: Mr. Chairman?

11 CHAIR TUCKER: Yes.

12 MR. WARREN: Before you act on the -- take a vote  
13 on the Consent Calendar, I'd just like to make the statement  
14 for the record that Items 17, 18, 19, 20, 21, and 22 all  
15 pertain to permits for dredging and deposition of dredged  
16 spoils.

17 Of those six, Items 17, 20, 21, and 22 provide for  
18 deposition at in-bay sites, four of which staff recommends a 25  
19 percent per cubic yard deposition fee.

20 Inasmuch as this policy has been requested to be  
21 reviewed by the Bay Planning Coalition, it was agreed by me  
22 with the Coalition, with the consent of the applicants  
23 themselves, that the mitigation fee would be collected but that  
24 it would be held in trust in the event the Bay Planning  
25 Coalition could convince the Commission to abandon its present

1 policy.

2 CHAIR TUCKER: Okay. Mr. Manning moves the  
3 Consent Calendar, Mr. Stancell seconds, it's approved.

4 Next we'll go to the regular calendar. The first  
5 item up is Item 34. Before I start calling the witnesses, Mr.  
6 Warren, do you want to explain to the Commission what is here  
7 before the Commission to pick up?

8 MR. WARREN: First off, Mr. Chairman, on the  
9 regular calendar, Items 35, 37, 38, and 39 have been pulled.  
10 That leaves Items 34 and 36. Item 34 will be presented to you  
11 by Mr. Hager and Mr. Collins.

12 DEPUTY ATTORNEY GENERAL HAGER: Item 34 is the  
13 product of a settlement of litigation. This litigation  
14 involved the responsibility for the removal of deteriorating  
15 groins from Las Tunas Beach in Malibu that present a very  
16 serious hazard to the public.

17 The Los Angeles County Superior Court directed a  
18 settlement, realizing that the continued litigation over the  
19 responsibility for the groins would not be productive in the  
20 resolution of the litigation's objective, that objective being  
21 the removal of the groins.

22 A settlement agreement was entered into by the  
23 State; Ticor Title Insurance Company, who was the original  
24 permittee of the groins; and about 75 percent of the homeowners  
25 along Las Tunas Beach.

1           One of the chief features of the court-approved  
2 settlement is allowing the homeowners to replace the groins  
3 with eight new groins, and these groins will provide for their  
4 homes protection from erosion by the ocean.

5           In order for the homeowners to construct the  
6 groins, the Commission would have to issue to them a lease of  
7 the tide and submerged lands on which the groins would be  
8 located.

9           The Settlement Agreement provides for the  
10 Commission to issue a lease within a one-year period which  
11 could be extended for up to 90 days. That period as extended  
12 expires October 31, Wednesday.

13           The staff in conjunction with Dames & Moore has  
14 undertaken the preparation of an EIR which is a necessary  
15 prerequisite for the Commission action on the proposal for  
16 groin construction.

17           That effort has produced a Final EIR. The matters  
18 of the certification of the final and the issue to the settling  
19 homeowners of a lease for construction of as many as eight rock  
20 groins at Las Tunas Beach is now before you.

21           CHAIR TUCKER: Okay. Anything else?

22           DEPUTY ATTORNEY GENERAL HAGER: If you have any  
23 questions, we would be glad to answer.

24           CHAIR TUCKER: So the item that is up for  
25 consideration by the Commission is both the certification of

1 the EIR and the granting of the lease.

2 DEPUTY ATTORNEY GENERAL HAGER: Correct.

3 CHAIR TUCKER: We are not today discussing or  
4 approving, since it's been previously approved, the settlement  
5 itself?

6 DEPUTY ATTORNEY GENERAL HAGER: Exactly.

7 CHAIR TUCKER: Do either one of you have any  
8 questions before we begin?

9 (No response)

10 CHAIR TUCKER: Why don't we hear from those people  
11 who would be urging the Commission to not certificate the EIR  
12 and grant the lease.

13 I can't tell from the forms who is on what side,  
14 so I don't know if there are some representatives of those  
15 people who are the opponents, or do you prefer that we just  
16 take it by who is on top of the list? Anybody want to take  
17 responsibility here? No leaders, all followers? Okay.

18 Why don't we start with Fay Singer then.

19 MS. SINGER: Hello there, good afternoon. My name  
20 is Fay Singer and I am a homeowner at Las Tunas Beach. The  
21 request for this permit arises, as you know, from a settlement  
22 agreement negotiated, approved, and desired by three parties;  
23 namely Ticor, the owner parties represented by Mr. Dummit, and  
24 the State Lands Commission, represented by the Attorney  
25 General's office.



1           Therefore, although the applicant of record is Mr.  
2 Dummit, in effect all three parties to the agreement are in  
3 fact the applicants. This indicates a clear and evident and  
4 major conflict of interest on the part of the State Lands  
5 Commission acting as both applicant and judge. I believe that  
6 significant questions of ethics and legality exist in your  
7 ruling on this permit.

8           Within the context of this application, I am  
9 primarily concerned over the issue of public safety. The final  
10 EIR states that signage will be sufficient, despite the fact  
11 that Professor Osborne of the USC Department of Geological  
12 Sciences, involved at the draft EIR hearing -- his studies  
13 indicate signage cannot be relied upon to control behavior of  
14 people at our beaches.

15           Professor Osborne has been studying shallow water  
16 diving for L.A. County and Sea Grants for the state of  
17 California and the federal government. I would suggest that  
18 his might be considered an expert opinion. He indicates that  
19 lifeguards should be encouraged in this case, in contrast to  
20 the evaluation of the final EIR.

21           My initial question at the hearing of the draft  
22 EIR still remains unanswered. Are there any private groin  
23 systems without lifeguard supervision in the state of  
24 California?

25           The final EIR quotes Ken Jacobson, the Marine

1 Safety Chief, as indicating the city of Newport Beach only bans  
2 people from climbing on jetties during quote "dangerous ocean  
3 conditions." At that time they are closed by fencing and  
4 placing signs at the foot of each jetty. Who is to do this at  
5 Las Tunas Beach?

6 Jean Swidle, L.A. County Lifeguard Department,  
7 according to the EIR, quote "does not feel jetties generate the  
8 majority of accidents, surfboards do." She further says,  
9 "Signage is not the usual practice; lifeguards are used to keep  
10 people off the jetties."

11 Inconsistent with this testimony, the EIR  
12 concludes that a signage program will be sufficient to reduce  
13 the potential impact.

14 There are other inconsistencies in this report  
15 such as the engineering report indicating rubble mound groins  
16 will be the cheapest of the groin systems and the EIR  
17 indicating otherwise. I cannot understand the basis for some  
18 of the conclusions.

19 I think it's very interesting that this entire  
20 lawsuit and Settlement Agreement came about in an attempt by  
21 all parties to relieve themselves of the responsibility for  
22 liability, and so some homeowners have agreed to assume this  
23 liability on the groins in an effort to save their homes from  
24 storm damage -- a tradeoff.

25 However, is the State really relieved of this

1 responsibility? The State Lands Commission has been fully  
2 advised of the potential dangers to the public caused by this  
3 groin project.

4 If they approve this project, aren't they still  
5 legally responsible in case of an accident, by virtue of the  
6 fact they approved a project dangerous to the public?

7 The fact that the homeowners assume liability on  
8 the groins does not relieve the State from the responsibility  
9 of granting permits for hazardous projects. I think it can be  
10 argued that state agencies owe their constituents a safe  
11 environment.

12 Environmental issues seem to be the relevant  
13 issues of this decade. I remind you that along with saving the  
14 environment, the task of providing a safe environment is of  
15 equal importance.

16 I have many other concerns in addition to these.  
17 By allowing this project you are allowing eight rubble mound  
18 groins to be built in the same position as the previous groins.

19 I'm a homeowner with a groin on and abutting my  
20 property, so in effect you are approving constructive  
21 condemnation of my property. Over 50 percent of our 30-foot  
22 wide lot will consist of a rubble mound groin instead of a  
23 sandy beach.

24 We do not need this rubble mound groin for  
25 protection of our home. We have been through two major storms

1 with no damage. We have a very good sea wall and an engineered  
2 foundation.

3 This project has been planned without not only our  
4 approval, but no consultation, advice, or knowledge. A group  
5 of homeowners in effect are deciding what they will do on our  
6 private property, a classic example of tyranny of the majority.

7 I expect you as my elected representatives to  
8 protect my interests. If you don't, who will?

9 Thank you for your time. If you have any  
10 questions you want to address to me, I'm happy to answer them.

11 (No response)

12 CHAIR TUCKER: Thank you.

13 Kurt Simon.

14 MR. SIMON: My name is Kurt Simon. I'm a property  
15 owner. I've had my place in Tunas Beach for about 20 years.  
16 I'm surprised -- you gentlemen are not the Commissioners, are  
17 you?

18 CHAIR TUCKER: Yes. We represent the  
19 Commissioners.

20 MR. SIMON: But you're not the Commissioners?

21 CHAIR TUCKER: We're their deputies.

22 MR. SIMON: How come the Commissioners aren't  
23 here? We were told we would be addressing the Commissioners.

24 CHAIR TUCKER: Right, and you are. This is it.

25 MR. SIMON: Well, something is wrong, because you

1 are the ones responsible for what I want to complain about,  
2 that I have a complaint about.

3 CHAIR TUCKER: Right, and we represent the  
4 Commissioners and we can vote. And that's what we do and  
5 that's how the Commission operates.

6 MR. SIMON: I have the uncomfortable feeling that  
7 the State Lands Commissioners don't know what's going on, and I  
8 think that it's the staff that keeps them from being informed.

9 I've been waiting for about eight years, ever  
10 since this cat-and-mouse game was started by the Commission, to  
11 let the Commissioners personally know what's going on. We know  
12 what's been going on for over 70 years since Ticor Title  
13 Insurance and Trust Company at that time built the groins  
14 without a building permit, then later promised to maintain  
15 them.

16 For over 60 years they didn't, and the State did  
17 nothing about it. Now they finally decide to sue Ticor --  
18 better late than never -- but Ticor had long since sold their  
19 land and sold it with misleading title policies to boot. That  
20 doesn't excuse them from keeping the written agreement and  
21 paying for their misdeed.

22 Instead of vigorously prosecuting the guilty  
23 insurance giant, the State Lands Commission and their  
24 attorneys, in collusion with the defendant Ticor, dragged over  
25 82 of them in -- all of the nearby houses into court. People

1 who had nothing to do with Ticor's misdeeds.

2 I have in fact for years attended the court  
3 procedures, endlessly dragging on. Others made the mistake of  
4 entrusting their fate to attorneys who collected huge fees from  
5 liability insurance companies, delaying this simple \$2 million  
6 dollar repair job for already eight years.

7 Disgusted, I complained so vigorously that I was  
8 finally dismissed from this case, but not before my liability  
9 insurance had to pay for the defense of me alone over a quarter  
10 of a million dollars in legal fees. And it isn't over yet. I  
11 am still involved in about 50 cross-complaints.

12 I don't know if you can realize that something  
13 must be wrong. I feel it is. And it isn't only the quarter of  
14 a million dollars for my insurance. It has cost me a lot more  
15 than money. It has cost me time, aggravation, harassment, and  
16 cost me my naive confidence in the judicial process and in the  
17 integrity of state government.

18 For all this infamy, you have earned the gratitude  
19 of Attorney Benevolent Society for this multi-million dollar  
20 bonanza, at the expense of -- well, you know whose.

21 And what you are doing to us is just awful, and  
22 what I've mentioned so far isn't all. There is still more  
23 skullduggery. In a planned collusion between you and Ticor it  
24 was decided to let Ticor off the hook for possibly 30  
25 multi-million dollars totally unrelated lawsuits, and other big

1 insurance companies were getting away for a pittance.

2 How can you not only permit such a scandal but  
3 promote it? Using the phony Geological Abatement District  
4 excuse, there is no geological hazard. You shift the cost of  
5 maintenance plus the liability for the groins that are built on  
6 State land, on the backs of innocent nearby homeowners.

7 And in order to get these homeowners to sign this  
8 atrocious so-called settlement, lies, threats, blackmail, and  
9 other dirty tricks were used. I'd be glad to give you details.

10 But it's no use asking the attorney general to  
11 look into this seemingly conflict of interest, after all it's  
12 his gang you are using, and I may yet have to hire my own  
13 investigator to look into this seeming payoff. Meanwhile, you  
14 can tell the Commissioners shame on them for what they are  
15 doing.

16 CHAIR TUCKER: Okay, thank you.

17 Arnold Graham?

18 MR. GRAHAM: Thank you, gentlemen. My name is  
19 Arnold Graham. I represent Mr. and Mrs. Eddie Weitzer,  
20 trustees of the Weitzer Family Trust. Mr. and Mrs. Weitzer and  
21 the Family Trust are owners of a property in Malibu.

22 I would request that this Commission not view this  
23 particular matter in a vacuum, that is, it's related more than  
24 just to a simple EIR. The background and history you have some  
25 familiarity with, but it involves the State's desire to want to

1 remove some groins, some shrapnel like protrusions existing on  
2 the beach at the present time.

3 In order that they were able to do that. they  
4 started to compel Ticor to take the responsibility, since Ticor  
5 installed it. The State was at some risk in compelling the  
6 removal of those groins, that old groin system, so how did they  
7 do it? They filed a lawsuit, and somehow, and as we have  
8 heard, we've all been kind of encumbered in this process.

9 The State obviously was concerned for its own  
10 liability in removing the groins so it desired to shift that,  
11 as has been spoken to before. But the necessity for removal of  
12 pre-existing groin systems does not compel the conclusion that  
13 there needs to be a new groin system. There's no necessity for  
14 new construction. There's -- even though someone may want  
15 them, it is not compelled.

16 The concepts of the new construction have not been  
17 adequately addressed in the EIR. The precise construction  
18 methodology has not been addressed; therefore we don't know the  
19 conclusions that flow from that.

5  
20 We don't know the quantity of fill or other  
21 artificial materials that will be required for this particular  
22 project, nor do we know the methodology that will be used in  
23 implementing or installing those. We don't know the  
24 consequences of probable erosion or accretion, both at the site  
25 or upcoast or downcoast.



1           That has not been adequately analyzed. There is  
2 no data base to allow you to make an informed decision on this  
3 application because of the absence of data.

4           We don't know the effect of this proposed  
5 construction on the property owners, during construction, after  
6 construction, or during the functioning of this proposed groin  
7 system.

8           We don't know the impact on traffic. We do know  
9 that the Pacific Coast Highway is dramatically affected by  
10 traffic at many hours of the day, and Caltrans has indicated  
11 that it wants a restriction on any construction activities.

12           The proposed construction time of 20 weeks, if  
13 there is a reduction in this time it would be probably expanded  
14 to in the range of a year for construction, but this has not  
15 been analyzed.

16           The impact on the environment, the impact on the  
17 residents, the impact on the community, has not been adequately  
18 analyzed by this draft of the EIR, and therefore I don't  
19 believe that there is sufficient information for an informed  
20 decision to be made by this Commission.

21           The noise factor has not been addressed. The dust  
22 factor has not been adequately addressed. The simple nuisance  
23 issue has not been addressed. Clearly there is going to be --  
24 if this is to go ahead, there is going to be a situation of  
25 changed conditions. But we don't know, no one knows, you don't

1 know. I don't know, the environmental assessors do not know  
2 what the changed conditions will be because they have not  
3 adequately addressed them in the draft of the report that has  
4 been presented.

5           Again, one of the fictions in this whole process  
6 has been the formation of a Geological Hazard Abatement  
7 District, a GHAD to use the acronym. But again, the geological  
8 implications haven't been addressed in the draft of the EIR  
9 either, so I would request this Commission to ask for some  
10 additional data, to get the information so that everyone can  
11 make an informed decision in a professional manner into all of  
12 those areas which are presently lacking.

13           Thank you.

14           CHAIR TUCKER: Thank you.

15           Nate Stock?

16           MR. STOCK: My name is Nate Stock. I'm a  
17 homeowner at Las Tunas Beach. I was part of a group that was  
18 headed up to form this district and look into the feasibility  
19 of this project, and our committee hired the best possible  
20 engineering firms and we feel they did a very superior job, and  
21 we're totally in support of this project and hope that you  
22 approve it today.

23           CHAIR TUCKER: Thank you.

24           Pepi Kelman?

25           MS. KELMAN: I'm a homeowner on Las Tunas Beach,

1 and I just wated to address some of the good points that were  
2 made here today.

3           Regarding Mrs. Singer who spoke about the people  
4 being injured or endangered or a hazard, right at this time we  
5 are now picking up the pieces of many children who fall on the  
6 rocks, on the rubble, they hurt themselves. I've been there 20  
7 years. I have assisted. I've called the ambulance.

8           So I feel that th. attempt for the new groins to  
9 secure a beach would make it less of a hazard. I think that if  
10 you have anything that somebody can carelessly climb on at all,  
11 they'll climb on it. I've had them climbing on my decks. I've  
12 had them, you know, I don't think we can eliminate people from  
13 being careless. I think the situation we're trying to create  
14 would be safer.

15           There is this issue of liability that keeps coming  
16 up. I think if the beach stays as it is we have a tremendous  
17 liability, because anyone who gets hurt -- and I think there is  
18 a record already of many people injured on the beach, so we  
19 have that threat of liability or we have more sand, more beach,  
20 and still a threat of liability. I don't think there's going  
21 to be any difference. Hopefully it would be better.

22           The other issue as far as the storms that never  
23 took any houses, I know of six homes on Las Tunas Beach that  
24 are not there today, taken from two different storms -- through  
25 homeowners I know personally, so it's not true that we have not

1 lost homes there.

2 Kurt Simon who has been a diligent fighter for all  
3 of the causes on the beach is making a very valid point when he  
4 talks about the fact that the homeowners in general did not get  
5 a fair shake on the way it went.

6 But I have a tendency to go forward instead of  
7 backward. I feel that the fact that the whole mess wound up in  
8 our hands is at this point not too important. How can we go  
9 forward? How can we get a beach back? How can we create a  
10 safe situation?

11 So to go backwards and blame Ticor and blame other  
12 people does not seem to be constructive any more. It's not  
13 what we're here today to talk about.

14 Also, Mr. Graham who spoke about the hazards, the  
15 traffic. At each juncture that we are going to come to we are  
16 going to have to address all of those problems. No one is  
17 going to build groins without addressing those issues such as  
18 traffic. We're going to address the construction, it's safety,  
19 it's impact on the homeowners. Here are 60 or 70 homeowners --  
20 I don't know how many actually, but that number, and 20 or 30  
21 that didn't sign that are concerned about traffic, dust,  
22 debris, noise.

23 We are fighting with each other when really I  
24 think instead of rehashing the issues that have been rehashed  
25 and remashed for the last I don't know how many years already,

6  
1 and I might add that Kurt has not lived in his home on the  
2 beach. I have lived in my home for 20 years, and I think that  
3 all the people who do live there now, can't they see this is  
4 just taking us backwards as to pointing the fingers at whose  
5 fault it is. I am more concerned about how we can go forward.

6 We need your permission to lease that land to make  
7 the next move. Maybe still we'll get your permission and  
8 something else will not work out, so this is just a beginning,  
9 and that's all I wanted to say.

10 CHAIR TUCKER: As I understand it now, if the  
11 Commission were to approve -- certify the EIR and approve the  
12 lease, then that's the beginning of a process, that does not  
13 necessarily indicate that the groins will be built --

14 MS. KELMAN: Correct.

15 CHAIR TUCKER: -- but additional --

16 MS. KELMAN: Places that we have to stop at and  
17 solve problems.

18 CHAIR TUCKER: Right, but the Commission's action  
19 would ensure that the old groins do get taken out; is that  
20 correct?

21 DEPUTY ATTORNEY GENERAL HAGER: That is correct,  
22 yes.

23 MS. KELMAN: Thank you.

24 CHAIR TUCKER: Let's give the others an  
25 opportunity to speak, and then I'll try and address your

1 question.

2 Jeff Hudson?

3 MR. HUDSON: I'm Jeff Hudson, and I'm a partner at  
4 Gibson, Dunn and Crutcher. I'm here on behalf of John Hall and  
5 Donna Hudson, two homeowners on Las Tunas Beach.

6 We have many remaining comments on the report, and  
7 have summarized some of them in a letter submitted last week.  
8 That should be part of the record.

9 The commenting parties raised many serious issues,  
10 but the responses in the finalizing addendum treated them as  
11 trivialities. It dismisses the 750 comments based on responses  
12 averaging three to four lines each. Most of the responses  
13 simply miss or refuse to confront the point.

14 Because of all the unresolved questions, today's  
15 proposed action is clearly premature. Time limits also make it  
16 impossible to go over all the deficiencies and insufficiencies  
17 in the report. My focus will be -- my comments will focus  
18 primarily on an example of the report's inadequacy, the  
19 treatment of visual impacts and alternatives.

20 In various places the report acknowledges that the  
21 visual impact will be a significant environmental effect. It  
22 says that the uncovered walls of the groins could be seven feet  
23 high and a person standing on the shoreline will not be able to  
24 see over the groins.

25 Without substantiation the project report then

1 claims, and I'm quoting: "The proposed project is designed to  
2 reduce visual impacts to the degree feasible, and still provide  
3 required shoreline protection. Reducing the height and/or the  
4 length of the groins will reduce this visual impact resulting  
5 from the presence of the rock areas; however, groins of reduced  
6 size would not effectively provide erosion protection for  
7 adjacent homes or to the Pacific Coast Highway.

8           These statements fail to acknowledge the fact that  
9 the original groins provided the protection at a greatly  
10 reduced size, probably less than half the height and less than  
11 10 percent as wide.

12           Also, despite requests by the owners of houses,  
13 the treatment of low profile groins in the report remains  
14 superficial and misleading. Just what are the project  
15 proponents planning to achieve? The report doesn't say  
16 anything more specific than a wider beach. How much wider? If  
17 you're talking about a beach like Santa Monica or El Segundo  
18 then lots of these groins are needed, but if you're talking  
19 about a project where the beach needs to be only 10 to 20 yards  
20 wider, then it's a very different question. And the one page  
21 of text in this thick report dismissing the low profile groins  
22 is completely inadequate. The report relies on conclusions not  
23 analysis to dismiss operatives that could mitigate what it  
24 described as a significant environmental impact.

25           In many instances the report is questionable on

1 many other grounds. There's a great deal of concern and  
2 speculation regarding the impact on surfgrass habitats. Indeed  
3 it appears that the sole mitigation is to empower the State to  
4 decide later on how to restore the surfgrass and to require the  
5 homeowners to pay potentially all related costs for that,  
6 whether it's technically feasible or not.

7 Let me also add that the surfgrass habitat gets a  
8 great deal of respect in the report. The same cannot be said  
9 about the human habitat which is impermissible in ways  
10 unacceptable for the surfgrass.

11 The finalized report includes a new engineering  
12 report that draws the whole project into question by concluding  
13 that Las Tunas Beach is not eroding. The State's own lawyer  
14 has submitted a letter stating that the methodology of the  
15 applicants' engineers, Moffatt & Nichol, is quote "technically  
16 questionable," end quote, and concluding that this latest  
17 report is quote "most meaningful in this particular situation,"  
18 end quote.

19 I emphasize that the State's own position is that  
20 the groin system is unnecessary to protect the beach. There is  
21 no scientific consensus on the project and the report offers no  
22 analysis to reconcile the differences between the experts.  
23 With scientific uncertainty and no clear benefits, approval of  
24 the project or a finding of overriding considerations cannot be  
25 supported.



1           A Statement of Overriding Considerations requires  
2     the finding that the benefits of the project outweigh the  
3     unavoidable adverse environmental effects. The benefits have  
4     only been vaguely described as home protection and a wider  
5     beach, but no specifics are given. The material distributed  
6     today adds removal of the groins as a benefit, but surely there  
7     are less obtrusive ways to do that.

8           The latest scientific report questions whether  
9     these changes are necessary at all. The State has consistently  
10    said they are not necessary. This project will have very  
11    negative environmental effects. It will have barriers to  
12    divide the beach into eight separate cells. It will eliminate  
13    sand and force walkers off the wet sand and onto dry heavy  
14    sand. It will force walkers to confront walls. It will have  
15    very serious traffic, noise, and lifestyle impacts during a  
16    long construction period. It will have a terrible visual  
17    impact. All these adverse effects are presently necessary to  
18    satisfy the apparent objectives.

19           Other adverse effects such as surfgrass loss and  
20    potential downcoast erosion have uncertain magnitude, and the  
21    report says they will be mitigated by imposing on the  
22    homeowners whatever cost results. The vague and uncertain  
23    benefits of the project are offset by very real costs. The  
24    proponents seek to appropriate supervision of costs, and  
25    unlimited liability exposure on homeowners. The mitigation

1 measures would add unlimited liability exposure from certain  
2 upcoast and downcoast erosion. The report is wrong in stating  
3 that these costs are irrelevant.

4 The economic and social effects of the project may  
5 be used to determine significance and physical changes caused  
6 by the project. For example, if the construction of a new  
7 freeway divides the existing community, the construction would  
8 be the physical change but the social effect on the community  
9 would be the basis for determining whether the effect would be  
10 significant.

11 This could be another example. If the  
12 construction of a new groin system imposes liabilities on the  
13 community and divides the existing beach into eight separate  
14 parts, the construction would be the physical change but the  
15 economic and social effect on the beach community would be the  
16 basis for determining that the effect would be significant.

17 The original EIR addressed socio-economic issues  
18 and costs. It was only when the opponents challenged the  
19 analysis in this area, that it was finalized in the agreement,  
20 and then they asserted that these impacts are irrelevant.

21 The report effectively ignores the costs and  
22 liabilities. There is no basis on which to conclude that the  
23 benefits, which are unspecified and drawn into question by the  
24 report and disputed by the State itself, outweigh the visual  
25 impact and the adverse effects.

1 I've had a chance to briefly look at the Statement  
2 of Considerations -- or Overriding Considerations handed out a  
3 few minutes ago. It offers no meaningful analysis of risks and  
4 benefits. Indeed it dismisses several alternatives for  
5 eliminating impacts because they are infeasible. Why are they  
6 infeasible? Not because they won't work, not because they are  
7 technically unsound, not because they cause other problems,  
8 instead it's because they aren't feasible because they do not  
9 meet the terms of the settlement agreement which calls for  
10 eight groins.

11 That is patently absurd reasoning. That cannot be  
12 the test for an Environmental Impact Report. This report does  
13 not provide support for any of the conclusions the law requires  
14 for certification of the report or approval of a project. This  
15 report should not be certified and the project should not be  
16 approved.

17 Thank you.

18 CHAIR TUCKER: Okay, thank you.

19 Lynn -- and the last name is C-i-c-o-t-t-e.

20 MR. CICOTTE: Cicotte.

21 CHAIR TUCKER: I'm glad I didn't try that.

22 MR. CICOTTE. My name is Lynn Cicotte. I  
23 represent Dorothy and Robert Colbert, homeowners, 20-year  
24 members on the beach. Obviously you've been in contact with  
25 Robert Colbert, he's been quite active in this thing.

1           The problem with the report that you're receiving  
2    is that it's unbalanced. In other words what you've got is  
3    essentially a one-sided story. The way this -- to appreciate  
4    this, what you have to understand is that once the State and  
5    Ticor smelled that they could get some kind of a settlement of  
6    this deal, what happened was that the courts then caused a  
7    closure basically of information to those parties, those  
8    homeowners who did not go along with the deal.

9           That way they were able to present a one-sided  
10   report without giving to those homeowners who did not have  
11   access to this information, the information. That information  
12   was constantly hidden from them, and absolutely they were never  
13   allowed to take part in any of the developments of the reports.

14           It would have been much better had you had before  
15   you the reports not only of those who wish to have this  
16   settlement go down but the reports of those who did not want  
17   the settlement to go down. As a result, because of the way  
18   it's happened, you only see one side. Now you begin to smell  
19   that there are problems with that report. They have been  
20   presented to you by the other speakers here. But the point is  
21   we have matters which are unresolved only because you get one  
22   side.

23           The point is here, this beach is not something  
24   that's new to the area. This beach has been here for quite a  
25   while. The State of California has looked at it for quite a

1 while. The Corps of Engineers has looked at it. The point is  
2 all the decisives should have been considered when putting it  
3 into this report. There have been independent engineers who  
4 have looked at this. They have basically the background and  
5 the knowledge to realize what would happen here to the beach,  
6 the sand.

7 In the old days before we had all this development  
8 going on, you used to be able to get sand as a natural outflow  
9 of the rivers and creeks that come along the coast. That sand  
10 would come down in natural drifts by the coast and that would  
11 naturally replenish the beaches.

12 Development has now cut off the access that we had  
13 to sand anymore, and sand becomes a very rare commodity coming  
14 down the coast. We have then the question of -- you're looking  
15 in this report as to sand that they can put in now, but that  
16 sand's going to disappear. That sand is not going to stay  
17 there forever because we don't have the replenishment.

18 So therefore, five years from now are we going to  
19 have those 200 trucks coming down for a period of months to  
20 replenish it? That has not been addressed in here. We don't  
21 know whether those groins are going to do anything but to  
22 capture sand that has been put there for a period of time.

23 Has the report addressed whether they will be able  
24 to keep that sand? Has the report addressed whether down beach  
25 there's going to be any sand? They talk about to get groins

1 and get sand to put around them. What sand? We don't have it  
2 anymore. That's something we have to appreciate in this world  
3 where that is a very rare commodity.

4 These groins are not going to accomplish the  
5 purpose. You have had an unbalanced presentation, and to make  
6 a decision on that unbalanced presentation would not do service  
7 to the offices that you have.

8 Thank you.

9 CHAIR TUCKER: Thank you. Craig Dummit.

10 MR. DUMMIT: Yes, my name is Craig Dummit. I'm  
11 the attorney for the homeowners who have signed the agreement,  
12 which represents close to or in excess of 80 percent of the  
13 homeowners now, sometimes referred to as the "silent majority  
14 of Las Tunas Beach."

15 We have with us today, if information or questions  
16 to them would be helpful to you, Bob Nathan from Moffatt and  
17 Nichol who drew up the engineering plans for the groins and has  
18 some renderings; Ray DeWitt from Dames & Moore who was in  
19 charge of the Environmental Impact Report, and some of the  
20 officers and committee heads of the homeowners, some of whom  
21 you've already heard from.

22 I'll keep myself available for issues that might  
23 come up and not try to respond to every matter unless you have  
24 some questions that you specifically would like responded to.

25 But before I do that there are just three subjects

1 that I could very briefly add some information on which have  
2 come up today, and then I'll turn it over to you gentlemen as  
3 to whether there are any issues that you would like some  
4 information from the applicant, since technically myself and  
5 our office is the applicant in this permit process.

6 First in regard to public safety relating to use  
7 of the beach after the groins are implemented or construction  
8 is finished. This permit does not affect or deal with what  
9 public usage will occur, what type of public usage, or in what  
10 conditions, whether it be lifeguards, signage, fences that keep  
11 swimmers and fishermen from going on the groins or what. That  
12 will be the function of the public entity -- usually the State  
13 or the County, that makes the decision as to what would be a  
14 safe and appropriate public use of this beach and under what  
15 conditions.

16 Secondly, whatever project is built will certainly  
17 be safer than what is there now, and in fact it was lawsuits  
18 arising from injuries caused by the current groins -- which are  
19 continuing even this year, that started the whole litigation  
20 process.

21 In those lawsuits the State has always been a  
22 party, Ticer has always been a party, and the homeowner or  
23 homeowners in front of groins where the public was injured have  
24 always been a party. So there is existing liability even  
25 though some of the homeowners may not fully appreciate that, in

1 the condition of the groins as they currently exist which would  
2 be removed.

3 Finally as to whether the groins that are proposed  
4 would be safer than the spikes that are there now, obviously  
5 they would be. Whether the groins would be a reasonable, safe  
6 alternative, I can say that none of the opponents of the  
7 project nor our office nor any of the consultants or experts  
8 that have worked on this, has ever found or heard of one single  
9 lawsuit in the State of California arising from anyone being  
10 injured on a groin anywhere in the State.

11 In regard to the issues which were raised or not  
12 raised in the Environmental Impact Report, Dames & Moore worked  
13 very closely with your State Lands Commission staff, both  
14 before preparation commenced and during preparation of the  
15 report, to make sure that all issues which the State Lands  
16 Commission wanted information on and deemed relevant were  
17 covered in the Environmental Impact Report.

18 In addition to that, there was a public hearing in  
19 Santa Monica that lasted quite a long time I understand, and  
20 many of the same people who address you, addressed the people  
21 at that hearing.

22 So there has been an opportunity to submit both  
23 written and oral comments and to raise any issue which could or  
24 should be raised, and after spending over a quarter of a  
25 million dollars in expert consulting fees and engineering fees



1 to come up with the environmental document we have, I would  
2 find it surprising and shocking if any issue, regardless of how  
3 remote, was not brought up by the opponents or otherwise  
4 brought up during the environmental process.

5 Indeed for example, you'll see that this project  
6 has been analyzed to the extent of even stating the number of  
7 truck trips and their course to the project site, that will  
8 occur over the four-month construction process.

9 So every detail has been looked at, and I think  
10 what they are really saying is that some of the issues have not  
11 been resolved to their satisfaction. Some of the issues  
12 weren't resolved to our satisfaction either, but that's part of  
13 the give and take of the environmental process.

14 Finally in regard to the visual impacts, the  
15 visual impacts should be, at least on a -- realizing it's a  
16 subjective situation, not significantly greater than they are  
17 now, for the reason that the proposed rock groins will be  
18 approximately the same length and approximately the same height  
19 as what is there now in regard to the actual structure.

20 The major difference will be instead of replacing  
21 the steel with steel, the steel will be replaced with rock, but  
22 will go out about the same distance into the ocean and be about  
23 the same height within a few feet of what was there 60 years  
24 ago and what the community has lived with for 60 years and  
25 accepted for 60 years.

1           Let me just say that if that is still an uncertain  
2 item, we do have renderings of the profiles of the steel  
3 groins, the profiles of the rubble mound groins, and to sum it  
4 up it is essentially the same size structure, it's just made of  
5 different material.

6           Some people have been misled by the fact that the  
7 base of this rock groin is substantial, 30 or 40 feet across  
8 the base, but that base is under the sand, as is about 75  
9 percent of the steel groins now under the sand. So the height  
10 of the groins above the sand and above the water will be  
11 essentially the same as it has been now, and that certainly has  
12 not caused any divisions in the community or drop of property  
13 value or reduction of people's enjoyment of the beach.

14           So with those brief comments, I'll ask you now --  
15 or if you want me to address some issues later, if you have any  
16 questions you would like me to provide further information on,  
17 or any of the consultants that are here.

18           DEPUTY COMMISSIONER STANCELL: There are eight  
19 groins now, is that right?

20           MR. DUMMIT: There are currently eight groins, and  
21 the -- it's a groin replacement project really.

22           DEPUTY COMMISSIONER STANCELL: Just replacing  
23 what's there?

24           MR. DUMMIT: Yeah. It is not only to replace  
25 what's there in regard to height and length, but hopefully to

1 put them in at the same place. The present plans have them in  
2 the same place as the existing groins; one good reason being  
3 that they turned out to be in the engineeringly correct  
4 locations.

5 And another matter from our point of view or side  
6 that will help you. If we put them in the same location, we  
7 can cover the current steel spikes with the rock and save about  
8 a half a million dollars of removal costs that we would  
9 otherwise incur if we put the new groins in a different  
10 location.

11 DEPUTY COMMISSIONER MANNING: The renderings you  
12 described are also in the EIR?

13 MR. DUMMIT: Pardon me?

14 DEPUTY COMMISSIONER MANNING: The renderings you  
15 just referred to are in the Environmental Impact Report?

16 MR. DUMMIT: Some of them are and some of them are  
17 new. The ones that are new are ones that deal with the  
18 aesthetic impact concerning the height of the groins, because  
19 there was a lot of confusion.

20 Some people I understand thought that these groins  
21 would extend 20 feet above the sand for example, and it's to  
22 show that given the amount of the groin that is under the sand,  
23 as is the present groin, how much of it will be sticking out  
24 above the sand and water compared to how much is now with the  
25 steel, and it's essentially within a foot or two of the same

1 height.

2 DEPUTY ATTORNEY GENERAL HAGER: May I just make  
3 one clarifying point. I don't want any misconception here.  
4 The fact that the groins have deteriorated substantially over  
5 the years, there's not that much left of them, so what you're  
6 replacing -- if you compare what you have today with what  
7 you're going to replace, you're going to have something far  
8 more intrusive than what you have today, because it's been  
9 deteriorating.

10 CHAIR TUCKER: That's similar to how it started  
11 out.

12 DEPUTY ATTORNEY GENERAL HAGER: I don't know how  
13 it started out, but I'm just --

14 DEPUTY COMMISSIONER TANCELL: Well, 60 years ago  
15 they had groins in there.

16 DEPUTY ATTORNEY GENERAL HAGER: You had a lot more  
17 than you have today.

18 MR. DUMMIT: Yes, the comparisons are made  
19 comparing the present engineering plans to the permitted plans,  
20 as-built plans, for the groins back in 1930 and '32. Indeed  
21 some of these groins have actually tipped over and are flat,  
22 while others are still sticking up that have the tops of them  
23 eroded away to create the spikes that are dangerous.

24 CHAIR TUCKER: One other point. As I understand  
25 it, the proposed lease has provisions in it that would allow

1 the location of the groins within 60 feet of the existing  
2 groins?

3 MR. DUMMIT: That is correct.

4 CHAIR TUCKER: So the lease itself does not compel  
5 the location at a specific point, but within a range.

6 MR. DUMMIT: That's correct. We would have  
7 preferred to put them --

8 CHAIR TUCKER: I shouldn't say "compels." It  
9 allows, but --

10 MR. DUMMIT: We would have preferred to put them  
11 where the existing groins are now, but for costs and legal  
12 reasons we may be compelled to move some of them, especially  
13 the problem with groin number eight which is technically on  
14 Parks and Recreation property.

15 And that's why that provision was put in, because  
16 that groin may have to be moved slightly onto private property  
17 if we cannot get the permission of Parks and Recreation to put  
18 the new groin in the same location as the old one is now.

19 MR. HUDSON: May I please respond on the height  
20 issue?

21 CHAIR TUCKER: Why don't -- let's everybody get  
22 done here and then make a note to yourself and you can tell us  
23 about it then.

24 John Crutchfield?

25 MR. CRUTCHFIELD: Good afternoon, gentlemen. My

1 name is John Crutchfield. I'm here on behalf of Mr. and Mrs.  
2 Harrow, Ms. Homer, and Mr. Taves, all of whom are homeowners in  
3 the Las Tunas district.

4 A lot of what I had to say has already been said  
5 specifically by Mr. Hudson and Mr. Graham. I think the focus  
6 on context is important here. The liability issue has been  
7 totally overlooked in the final Environmental Impact Report,  
8 notwithstanding the fact that it was preliminarily addressed as  
9 socio-economic concerns in the initial draft. Obviously it  
10 seems to be that they are side-stepping what is a difficult  
11 issue.

12 That was, as you might understand, the basis and  
13 the thrust of the initial lawsuit was, who is going to bear the  
14 liability? Who is going to be responsible for either removing  
15 the existing groins, replacing, whatever needs to be done.

16 The State said Ticor should do it, Ticor said the  
17 homeowners should do it, and the homeowners said, you know, we  
18 didn't know anything about it. That's the context of this  
19 entire lawsuit and why so much money has been expended to date.

20 What has resulted from the Settlement Agreement is  
21 that the two principal parties, the State and Ticor, the  
22 parties to the original lease, are now seeking to shift all  
23 liability to the homeowners for any future construction,  
24 whatever it might be. A necessary prerequisite to that  
25 shifting of the liability, against the wishes of many of the

1 homeowners and the homeowners I represent, is the issuance of  
2 the State lease.

3 Some of the homeowners I represent, for example,  
4 would be perfectly content to have the groins as they currently  
5 exist simply removed, and no groins be replaced. That would be  
6 obviously of no cost -- for new construction, and that was one  
7 of the alternatives that was summarily dismissed in the  
8 Statement of Overriding Considerations and in the final report.

9 And the reason given, as previously pointed out,  
10 had nothing to do with the technological effectiveness or any  
11 kind of cost benefit analysis, it simply didn't comport with  
12 the terms of the Settlement Agreement; i.e. the parties wishing  
13 to shift liability to the homeowners would not be able to do  
14 that, and therefore that alternative was dismissed.

15 What we have to look at as you do in legal  
16 decisions or as you do in your decisions on a daily basis, is a  
17 balancing. One thing that the Environmental Impact Report has  
18 given us is a lengthy list of admitted significant adverse  
19 environmental effects, and I would address you, gentlemen, to  
20 the second page of the initial Environmental Impact Assessment  
21 Forms filled out by Mr. Dummit on September 29th of 1989.  
22 There are 13 environmental impact assessments listed, to which  
23 he answered "yes" to only one of them.

24 Even a cursory review after a review of the Final  
25 Environmental Impact Report will reveal at least 8 of the 13

1 should have been checked "yes" or "maybe", and have been borne  
2 out as such by the final Environmental Impact Report.

3 So the one thing that is clear is that there are  
4 going to be significant adverse environmental effects from this  
5 project. What do we balance that against?

6 Well, what you would like to be able to do is  
7 balance it against is some sort of scientific or unanimous  
8 consent finding that there is erosion going on on the beach and  
9 that these groins are necessary to protect from that hazard and  
10 that they will be effective in doing so.

11 But as Mr. Hudson points out, in the most recent  
12 scientific analysis there is some question as to whether or not  
13 this is necessary, number one, and there is some question as to  
14 whether it's going to be effective, number two.

15 So without even getting to some of the other  
16 adverse effects of downcoast erosion, we're not even sure that  
17 the effects that this is designed to prevent even exist; or  
18 secondly, that this methodology, with all of its adverse  
19 significant environmental effects and its ominous shift of  
20 liability to the non-consenting homeowners, is going to  
21 accomplish that result.

22 So I respectfully submit it's not a very difficult  
23 weighing process to do. You have concrete negative effects and  
24 questionable at best positive effects to balance, and in view  
25 of the vociferous objections made here by many of the



1 homeowners, I respectfully request that you deny the  
2 application for the State lease.

3 Thank you very much.

4 CHAIR TUCKER: Thank you.

5 Carolyn Van Horn?

6 MS. VAN HORN: I'm Carolyn Van Horn. I'm a  
7 14-year resident in Malibu, and my interest is PCH, Pacific  
8 Coast Highway. And I'm not addressing the liability of this  
9 project per se, but the impact of using Pacific Coast Highway  
10 for the loading and unloading -- or the unloading of the I  
11 guess it's called "rubble," the large boulders onto the sand.

12 My understanding from Caltrans is that the funds  
13 that they have had currently and in the past number of years,  
14 ten years or so, for repairs and maintenance of the highways in  
15 the State has been cut from \$800 million to \$200 million for  
16 the next seven years. That's a drastic reduction in the monies  
17 that will be available for repairing and maintenance of  
18 highways.

19 Pacific Coast Highway is a highway that is used  
20 for egress and ingress by not only the residents, but it is  
21 really used as a freeway by the commuter traffic from the  
22 Valley in the morning and in the evening, so that the further  
23 use of heavy trucks on that highway, which will cause  
24 deterioration of the road, I think is something that should be  
25 seriously considered, that those funds have been drastically

1 cut and they will not be available.

2 Number two, a number of years ago -- I've lived  
3 there 14 years, and shortly after I moved out there I believe  
4 that the trucks that did travel PCH were banned, and the major  
5 reason they were banned on the Pacific Coast Highway was  
6 because of the ecological instability of the cliffs.

7 The cliffs on the Pacific Coastline are naturally  
8 eroding cliffs, and the pounding and so on of the heavy trucks  
9 further caused that erosion. These trucks coming onto the  
10 highway for delivery will exacerbate that condition.

11 I noted that the only time that there is a ban of  
12 the trucks on Pacific Coast Highway is at what is referred to  
13 as "peak traffic hour," from 7:00 to 8:00 in the morning. I  
14 mean I know that every place in Southern California is terrible  
15 with traffic, but that's not quite accurate. Leaving Point  
16 Zuma at the eastern part of Malibu and coming into Santa Monica  
17 at 9:00 o'clock in the morning is also peak traffic time. So,  
18 you might want to address that particular time slot.

19 Also, with all of the development that is  
20 occurring in the last two years, two to three years, along the  
21 Pacific Coast Highway in Malibu, there are already many  
22 construction trucks coming in and out on PCH which cause a  
23 great deal of delay already.

24 Whenever there is any repairing, resurfacing,  
25 that's additional delay. And I really caution you -- I

1 remember seeing a necessary closing of a lane, there was only  
2 one lane open from near the Civic Center, from Pepperdine down  
3 to Webb Way, and it was during the middle of the day and it was  
4 only to resurface. There was an ambulance at the top of the  
5 hill. It could not get through. And we really don't need  
6 that. We only have one way in and out on PCH.

7           So I would just like to ask you to please look and  
8 see if there isn't some other way to bring it up. The only way  
9 I can think of is by barge. That might be cheaper in the long  
10 run when you consider the hazards to the highway.

11           Thanks.

12           DEPUTY COMMISSIONER STANCELL: May I ask you a  
13 question?

14           I was just curious about when you were told about  
15 the funding status, was that by Caltrans?

16           MS. VAN HORN: Yes, it was.

17           DEPUTY COMMISSIONER STANCELL: When did they tell  
18 you that?

19           MS. VAN HORN: I was attending a conference in  
20 Dana Point.

21           DEPUTY COMMISSIONER STANCELL: That was when, this  
22 year?

23           MS. VAN HORN: Yes, I think it was -- what is  
24 this, October? I think it was the -- either the first part of  
25 October or the last part of September. It was very recently.

1 DEPUTY COMMISSIONER STANCELL: Very recently?

2 MS. VAN HORN: Yes, and I am getting a letter to  
3 that effect. I wanted it today but I don't have it in my hands  
4 today.

5 DEPUTY COMMISSIONER STANCELL: Thank you.

6 CHAIR TUCKER: Geary Steffen?

7 MR. STEFFEN: My name is Geary Steffen. I'm a  
8 resident of Malibu. I've lived here for 23 years, only the  
9 last 10 of those years have been on Las Tunas beach.

10 It's interesting, this entire thing going on now  
11 for about almost eight years started over three little  
12 lawsuits. People who were jogging on the beach, cut their feet  
13 and one day -- I think it was an unemployed actress and she had  
14 her face scarred and she couldn't get work and she sued. She  
15 got an attorney and they sued the State of California.

16 The State says, Wow, we're being sued; who is  
17 liable? And they looked at the records and they found out that  
18 these were built 60 years ago and they were built by Ticor  
19 Title Insurance and Trust Company. So they were sued and that  
20 started the whole thing.

21 The lawyer fees, the attorney fees so far have  
22 been probably \$8 or \$10 million dollars, and the three suits  
23 combined were less than \$50,000 -- I think \$20-some-odd  
24 thousand dollars were actually settled. So we're talking about  
25 over a period of all the years of Malibu, say 60, 70, 80 years,

1 we're talking about \$24,000. That \$24,000 cost millions in  
2 attorneys' fees and puts us where we are today.

3 If we were to just go on as we are now, we might  
4 have a few more cut legs and arms, but it's not a serious  
5 thing. I mean, it really isn't.

6 With regard to the traffic, I don't know the  
7 number of trucks that it will take to put the sand and the  
8 boulders down on that beach, but assuming that 225 trucks is  
9 correct, we have two loading spots, so it wouldn't be 225  
10 trucks per loading spot, it would be about 112 trucks per  
11 loading spot.

12 And if we use the after peak traffic hours from  
13 10:00 in the morning and 4:00 in the afternoon, about a five or  
14 six hour period there, you're really talking about 12, 15  
15 trucks an hour. Even if all 225 of them were there at one  
16 time, which is impossible, it would be less input to the basis  
17 of where we are in reality. In reality we have 50,000 vehicles  
18 a day coming down there. Ten percent of 50,000 divided by one  
19 percent is 500; 225 is less than half of one percent of the  
20 traffic, so it's not a serious problem.

21 Sand. They say that the sand dumped in there will  
22 last, and I think some of it will. I think that knowing that  
23 the sand moves in and out is important to you folks. In a  
24 three-hour storm we've lost as many as four or five feet of  
25 sand. Now we haven't lost that sand, that sand has been taken

1 out by the storm and deposited wherever, and it may come back  
2 three weeks later or three months later or whenever.

3 And sometimes we even get a buildup, two feet of  
4 sand in an afternoon or evening. That's common, that's the  
5 tide and shifting sands in and out. So it isn't that you lose  
6 the sand and it never comes back. It does come back. There  
7 are sand banks out there, and I think those can all be  
8 verified.

9 And lastly, the people who are protesting here  
10 today are the minority of a group. In a democratic government  
11 we believe 51 percent is what it is. If you voted for Dukakis,  
12 just because he didn't win doesn't mean you stop living in  
13 America.

14 These people are the minority. More than 65 or 70  
15 percent of the people who live on this beach have decided that  
16 they would like to have a GHAD. It only requires 51 percent of  
17 the vote to have a GHAD, and so it is our intention to go ahead  
18 with it and do whatever's necessary.

19 We may never get the job done, but we need your  
20 approval to get it started. Thank you very much.

21 CHAIR TUCKER: Thank y u.

22 W. F. Keller?

23 MR. KELLER: Good afternoon. I'm Will Keller and  
24 I'm here to speak as an individual resident of Malibu and to  
25 provide you with some factual information regarding the traffic

1 considerations, and in no way to comment on the merits of the  
2 project. I wrote a letter which apparently did not arrive in  
3 time for consideration in preparation of the final EIR, and I'd  
4 like to excerpt some of it for you.

5 In order that people could have an opportunity to  
6 comment, it should have been publicised throughout the  
7 community, but was not. All of us will be impacted as users of  
8 the Pacific Coast Highway or as residents along the  
9 right-of-way. The possibility of 225 heavy truck round trips  
10 per day on PCH represents a significant impact upon the  
11 community.

12 I understand that Caltrans has indicated that  
13 truck activity on PCH should be restricted to between the hours  
14 of 9:00 a.m. and 3:00 p.m. and this would be a bare minimum  
15 acceptable because the highway at the vicinity of Topanga Beach  
16 operates at a level of service of "F" as late as 10:00 in the  
17 morning. As you are aware, that's pretty bad.

18 I also understand that Caltrans omitted mention of  
19 the ban on trucks with more than three axels and the weight  
20 exceeding 34,000 pounds on PCH between Topanga Canyon on the  
21 south and Decker Canyon on the north. That's just about the  
22 whole length of Malibu.

23 And the EIR mentions it on page 122 and then  
24 indicates that it was for safety reasons. It really wasn't.  
25 I've been a resident for 30 years and we lobbied for many years

1 on the basis of safety and got nowhere. And it was not until  
2 the big rock slides which occurred, and they then discovered  
3 that the vibration from those trucks was contributing to  
4 slides, also to damage to the homes along the way.

5 It is critical for you to know that that is the  
6 reason and to consider it seriously in what you are doing.  
7 Thus, if you allow almost 13,000 heavy truck round trips the  
8 entire length of Malibu, it would be counter to the purpose of  
9 the ban and could cause a serious and overlooked impact on the  
10 environment.

11 The most practical way to mitigate this impact is  
12 to require the trucks to approach the project only from the  
13 south -- or the east depending on how you want to look at it.

14 I would also urge you to consider the feasibility  
15 of delivering the sand and rock directly to the beach via  
16 barges, offloading with cranes and totally eliminating the  
17 problem.

18 That's the end of the letter, and I need to say  
19 that in my hasty review of this green document, which I guess  
20 is the final staff recommendations, it's all been ignored. No  
21 mention was made of the potential geologic damage to homes on  
22 the landslide sites, so I believe you're risking serious  
23 litigation, whoever would become the responsible group.

24 Truck activity was only being restricted from 7:00  
25 to 8:00 a.m. and 4:00 to 5:00 p.m. I think this is totally



1 unacceptable. Sand flats which could have been readily routed  
2 from the east -- I believe they were coming from Hansen Dam, so  
3 they could have come over the freeway, Highway 10 down to the  
4 Pacific Coast Highway in Santa Monica, in that direction, were  
5 intentionally being routed in the other direction so that they  
6 would drive the whole length of Malibu.

7 And this in no way mitigates morning peak hour  
8 traffic impact, which is from going to the east from the west  
9 in Malibu, and I don't understand how they could come up with  
10 the logic of doing that. You could make a justification for  
11 doing it for half a day in the evening, but not in the morning,  
12 it's ridiculous.

13 I therefore urge more sensitivity to the community  
14 and its environment from both you and the proponents of the  
15 project, and that you at least explore the feasibility of  
16 bringing the sand and rock in by barge, and if that's not  
17 feasible, to bring the trucks in from the east only between the  
18 hours of 9:00 and 3:00.

19 Have you any questions?

20 CHAIR TUCKER: Let me just ask the attorney  
21 general something. Who is going to decide about the  
22 transportation issues?

23 DEPUTY ATTORNEY GENERAL HAGER: Basically that's  
24 Caltrans and it states so in the finding, the EIR finding.

25 CHAIR TUCKER: Okay, so there's still a step that

1 will have to be gone through in terms of a determination by  
2 Caltrans that this activity would be safe and consistent with  
3 all the standards that they would apply.

4 MR. KELLER: And that's why it's worth a little  
5 delay if they would explore these other alternatives, including  
6 the barging. It might even save you money. And the one  
7 alternative if I recall was mention of bringing the rock in  
8 from Catalina rather than offloading it in Long Beach. Perhaps  
9 it is feasible, I'm not sure, but it's something worth looking  
10 into.

11 CHAIR TUCKER: Well, I'm just saying that if the  
12 Commission were to approve the lease today and certify the EIR,  
13 that is not a decision as to how and when this transportation  
14 will occur.

15 MR. KELLER: Well, the mitigating measures that I  
16 referred to are not correct, as it stands, so if you approve  
17 those --

18 CHAIR TUCKER: So you think they are insufficient?

19 MR. KELLER: Yeah.

20 CHAIR TUCKER: Thank you.

21 Okay, I have received slips from four people who  
22 indicated that they would like to speak if needed, and those  
23 are Jackie Carr, Kelly Wimberly, Steve Spina and James Irsfeld.  
24 I assume these are all people who would be supporting the  
25 certifying of the EIR and the granting of the lease.

1           If any of you would like to speak now, come on up.

2           MS. CARR: My name is Jackie Carr. I am a  
3 property owner at Las Tunas Beach. I have lived on that beach  
4 in four different residences over the last ten-year period.

5           The statement that the groin height will not be  
6 any different to what we have existing today is really not  
7 true. Between Budwood Beach and Topanga Canyon Beach we do not  
8 have any existing groins that are standing at the height that  
9 they were when they were installed.

10           If you walk to Buddwood Beach -- I am five foot,  
11 four inches tall and the one groin that is standing at this  
12 time I cannot see over. The only way I can get around that  
13 groin is by going way out into the water or going on Pacific  
14 Coast Highway. We can get through that groin today because the  
15 groin is so eroded that there are large gaps in it that we can  
16 go through.

17           The way the groins are being installed at this  
18 time, one will not be in front of my residence. But if one  
19 were to be in front of my residence, I would be here and be on  
20 the negative side of this, because I will be walking out of my  
21 house and I will be in tunnel vision. There will be eight  
22 major groins that are going to be taller than I am.

23           I walk on the beach every day. I will not be able  
24 to do this because I will not be able to go on someone's  
25 private property, under their house to get around the groin, or

1 to go 200-or-some-odd yards out into the water to get around  
2 the groin. So I will not be able to walk, something that I do  
3 daily.

4 My other major concern is I'm an animal lover and  
5 I can't tell you how many times this year on the beach I've  
6 called to have seals picked up from under the house, or injured  
7 animals.

8 What happens to a child? How do we get an  
9 ambulance down to pick up this injured person? My neighbors  
10 have several children; the children are in the water daily. A  
11 wave comes and the kids are on a surfboard and it knocks them  
12 into these rocks. How do we get these kids out of here? I  
13 don't know.

14 My final question is, I have taken a real estate  
15 examination. In the State of California any land from wet sand  
16 seaward belongs to the State. How did we obtain this  
17 liability? I would love to know. Thank you.

18 MR. SPINA: Hi, gentlemen, I'm Steve Spina. I've  
19 been a resident on Topanga Las Tunas Beach for 22 years,  
20 homeowner for approximately 6.

21 I would just like to ask you gentlemen a question  
22 here. I don't know how well versed you are on this particular  
23 EIR, but I think you're making a very major decision today. I  
24 don't know if you gentlemen are signing this in approval or  
25 disapproval, or will it go to the Commissioners. You as the

1 deputies can sign today?

2 CHAIR TUCKER: Yes.

3 MR. SPINA: Okay, let me ask you a question  
4 pertaining to the leasing of basically private lands -- or  
5 public lands to private entities. Would you know if this is  
6 the first case of this type in the State of California?

7 CHAIR TUCKER: Mr. Hight is our legal counsel, he  
8 can answer the question.

9 MR. HIGHT: There are a number of other groins  
10 located up and down the coast, I believe two of which are  
11 leased to homeowners associations.

12 MR. SPINA: So this in fact would not be a  
13 precedent-setting decision, this has already occurred?

14 I'd like to bring up one aspect of -- I gave  
15 testimony at the Santa Monica hearing about the health and  
16 safety problems on the beach, and as Ms. Carr had indicated,  
17 what do we do if there is an injury not only to people that are  
18 using the beach as a public facility but also to possibly the  
19 workmen that will be working on the project, on the groin  
20 system?

21 There seems to be no adequate way to transport a  
22 person up and down from the north/northwest and south/southeast  
23 or off of the beach itself onto the highway to transport to a  
24 medical center.

25 I think that should be of ultimate importance not

1 only to Cal OSHA but also for public safety to persons that are  
2 using the beach as a public usage. I don't think that was  
3 addressed properly. I think that should be one of the main  
4 issues before a decision is made regarding the health and  
5 safety of the public and workmen in the area.

6 That is all I have to say.

7 CHAIR TUCKER: Thank you.

8 MR. IRSFELD: Mr. Commissioners, I am James  
9 Irsfeld. I am a homeowner at the Las Tunas Beach and I am one  
10 of the silent majority that Mr. Dummit referred to.

11 I want to make just one point, and it's been said  
12 several times today, that the groins or groins of some sort are  
13 not necessary and the beach is not eroding. I'm not going to  
14 speak from a technical sense, I'm going to speak from what I  
15 have seen over the last 16 years. I am a percipient witness.

16 In the late '20s and early '30s I used to go up to  
17 Las Flores Beach, which is a couple miles further up the coast,  
18 to body surf. And as we went by what is now the scene of Las  
19 Tunas Beach, we were absolutely hysteric over the sign boards  
20 that appeared and said, Here are lots for sale, buy our lots.  
21 The water was lapping on the highway. There was no ground  
22 whatever. We didn't laugh so hard later on when those groins  
23 went in and beautiful beaches were developed.

24 Now I bought my house down there about 20 years  
25 ago, and at that time you could walk from my place clear up to

1 the Moonshadows, which is a couple miles further up the coast,  
2 at low tide. Now you're lucky if you can walk a hundred yards  
3 in either direction. To say that the beach is not eroding is  
4 absolutely ridiculous to anybody who lives there and who has  
5 seen the place.

6 So I believe that regardless of all of the nice  
7 theoretical doubts that have been cast, we have examples of  
8 what did happen when these groins were put in in the '30s. It  
9 did replace beach. There's no reason to believe that  
10 replacement of groins won't also replace the beach. We know  
11 what the place looked like before the groins were put in. I  
12 believe it will look like that again if we don't put them in  
13 this time.

14 Thank you.

15 CHAIR TUCKER: Anybody else before we return to  
16 Mr. Hudson?

17 MS. WIMBERLY: Hello, my name is Kelly Wimberly.  
18 I am a resident on Las Tunas Beach. I live there, I don't have  
19 a building that I rent as some of the others who have spoken.  
20 You have just told us today that you, as representatives of the  
21 Commissioners, are able to decide whether to approve or  
22 disapprove of this; is that correct?

23 CHAIR TUCKER: We're certifying the EIR and  
24 granting the lease, if that's the decision of the Commission.

25 MS. WIMBERLY: Yes, that's correct.

1                   CHAIR TUCKER: Those are the two decisions made  
2 today.

3                   MS. WIMBERLY: Okay, I would like to ask each of  
4 you if you have read the draft EIR cover to cover, the final  
5 EIR cover to cover, and all the letters that have been written  
6 for and against?

7                   CHAIR TUCKER: I can tell you that the  
8 Commissioners are well briefed on all of the issues in this  
9 case. We've spent a lot of time on it. It's come up a number  
10 of times, and we are aware of the public hearings that have  
11 been held before, the comments that have been made, and all of  
12 the views involved in this.

13                   MS. WIMBERLY: But is the answer "yes" that you  
14 have read the entire EIR, both draft and final and all the  
15 comments made?

16                   CHAIR TUCKER: I think the answer is the  
17 Commission has all of the information that it needs in order to  
18 make a decision.

19                   MS. WIMBERLY: Okay, but my question is that you  
20 are making the decision, and --

21                   CHAIR TUCKER: That's right, and I've answered  
22 your question, okay?

23                   MS. WIMBERLY: Well, actually you haven't, I'm  
24 sorry. If you're making a decision, then my question is, Has  
25 this been read by each of you?



1                   CHAIR TUCKER: That's the answer that you'll have  
2 to take.

3                   DEPUTY COMMISSIONER STANCELL: Perhaps I can  
4 answer your question. I did not read it, but I am relying on  
5 the staff of the State Lands Commission to represent to me as a  
6 representative of Jess Huff on this Commission all the facts as  
7 relates to that particular issue, so that I can make a judgment  
8 as to what is proper and appropriate in terms of the  
9 recommendation.

10                   And that doesn't mean that we did not read just  
11 this particular one, I hardly ever read all the EIR's that are  
12 related to a particular issue. Because number one, I don't  
13 have time to do that. I have other duties that I have to take  
14 care of.

15                   MS. WIMBERLY: I want to thank you very much for  
16 answering the question, because you did answer it, and I think  
17 it's a legitimate question. The representatives of the State  
18 Lands Commission are the ones that are giving you the  
19 information and recommending how to vote, so therefore it is  
20 they who are actually voting on this.

21                   CHAIR TUCKER: No, that is not correct.

22                   DEPUTY COMMISSIONER MANNING: No, that's not true.  
23 Let me --

24                   CHAIR TUCKER: All of the Commission members have  
25 looked independently at the information involved here, and I am

1       sure the decision of each of the Commissioners is based upon an  
2       independent review of all of this information. So the idea  
3       that it's the staff that's making the decision is incorrect.  
4       That is not the case.

5                 DEPUTY COMMISSIONER MANNING: Let me speak to that  
6       for a second. I represent Lt. Governor McCarthy on this  
7       Commission. I have gone through both of these documents here.  
8       I am familiar with the comments that most of the people have  
9       made here today. I have letters here in opposition, one from  
10      Mr. Hudson that I spent some time on the other day. So I don't  
11      think you should assume that we haven't spent a lot of time and  
12      energy on this, because we have.

13                MS. WIMBERLY: Well, I wasn't assuming. Thank you  
14      for answering the question.

15                DEPUTY COMMISSIONER MANNING: And I think that not  
16      only do we consider what the staff has told us, we do have our  
17      own independent judgment which we use quite often in assessing  
18      the information they give us, as well as the environmental  
19      documentation, and we consider your comments.

20                MS. WIMBERLY: Okay, good. I'm really glad to  
21      hear that, that you have -- at least two of you have read a lot  
22      of this and have read all the questions that a lot of us have  
23      raised.

24                Because if you have read the draft or the final  
25      you know that most of the questions that were raised in the

1 public meeting about the draft were not answered, and that  
2 there are so many inconsistencies and inaccuracies in both the  
3 draft and the final EIR and the reports that Mr. Dummit has  
4 given, that it would take days to address them all, as it took  
5 days and days to read all of this information.

6 And you would not approve this draft EIR if you  
7 had, as you have said, been so aware of what's been happening  
8 here.

9 Thank you.

10 CHAIR TUCKER: Anybody else who would like to  
11 speak before Mr. Hudson and Fay Singer?

12 Okay, Mr. Hudson.

13 MR. HUDSON: I just want to briefly address the  
14 visual impact and the height of the groins again. Mr. Dummit  
15 suggested that the height of the new groins would not be  
16 significantly different than the height of the existing groins.  
17 I don't have -- I haven't seen any renderings other than what's  
18 in the EIR, but I'm looking at Figure 2.2, and that shows the  
19 new rubble mound groins extending 12 feet above the water line.

20 Now there are a lot of people in the audience who  
21 are familiar with Las Tunas Beach. I would like to ask if  
22 there is anyone who has seen any existing groin that is twelve  
23 feet higher than the water level?

24 (Audience responds, negatively)

25 MR. HUDSON: Has anyone ever seen a groin that is

1 nine feet higher than the water level?

2 (Audience responds, negatively)

3 MR. HUDSON: Is anyone with familiar with a groin  
4 that is six feet higher than the water level?

5 (Audience responds, negatively)

6 MR. HUDSON: How about four feet higher than the  
7 water level?

8 UNIDENTIFIED SPEAKER: Four foot, that's the  
9 highest I've ever seen.

10 MR. HUDSON: How many of you -- is there more than  
11 one groin that is over four feet high?

12 Okay, there are two people in the audience that  
13 suggest that there may be more than one groin that is four feet  
14 high. No one in the audience suggests there's any groin higher  
15 than six feet. I think most of the groins are two to three  
16 feet above the water level, if that, and it's a very, very  
17 significant difference that we're talking about.

18 If you approve this, you will be approving a beach  
19 that doesn't have any kind of analogue in Southern California  
20 and throughout California in my experience. You will have  
21 these eight very close, very immense, jetties -- it's incorrect  
22 to call them groins -- jetting out into the ocean.

23 Why do we have to do that? Certainly the  
24 scientists don't agree. The safety has been glossed over, and  
25 it's suggested that there's no record of any reports. Why do

1 we have to set up a groin system like this? And in fact even  
2 those other groin systems such as the wedge in Newport, I look  
3 at that and I think it's notorious for being very dangerous.

4 This is going to have very unpredictable impacts  
5 and it's a very serious decision. And I know that the  
6 Commissioners want to respond to the danger of the existing  
7 groins and want to come up with a solution to have those groins  
8 removed, but that should not compel the Commission to make an  
9 improper judgment on this Environmental Impact Report.

10 Thank you again.

11 CHAIR TUCKER: Thank you.

12 Fay Singer?

13 MS. SINGER: Thank you. I don't want to belabor  
14 the point, but apropos of what Mr. Jeff Hudson just said, in  
15 1986 the State Lands Commission vis-a-vis your engineers -- and  
16 you must have the report somewhere in your files -- in 1986 you  
17 came to evaluate the groins and I stood in the house watching  
18 while a group of two engineers -- one of them I believe was Mr.  
19 Hadley and the other was I believe a Mr. Morrison, but I'm not  
20 sure -- dug potholes in front of our house for an entire day  
21 hunting for the groin. The next day they came with a metal  
22 detector, hunting for the groin, and I don't believe they ever  
23 found it.

24 Now admittedly right now the sand level is down  
25 and our groins are showing. We are a property owner since

1 1976. The last two to three years are the first times that we  
2 have seen the groin that was on our property. When we bought  
3 our groin there was at least ten feet of sand covering that  
4 groin. There was no danger to the public -- I forgot the point  
5 I was going to make.

6 The groins are -- a twelve foot high groin is  
7 going to be considerably different from what we have now. Now  
8 the original groins I doubt very much were over five feet wide.  
9 The rubble mound groins, the information that we have is eight  
10 rubble mound groins, 35 feet wide at the base, to a height of  
11 12 feet, a truncated pyramid shape, with a width of 8 to 10  
12 feet at the top.

13 Now if that bears any resemblance to what exists  
14 now, which is 6 inches wide maximum and nowhere near 12 feet  
15 high, I don't know what their base is, but I suspect that they  
16 are going to be a much larger visual impediment than exists  
17 now. For the groins that we have now, between upcoast and  
18 downcoast, the maximum I have ever seen on our groin is maybe 3  
19 feet.

20 Now I don't believe the other consideration of  
21 liability. I don't believe that a groin 8 to 10 feet wide at  
22 the base and 12 feet high is a lesser potential for injury than  
23 a 6-inch-wide groin, and when they show -- very visible, I  
24 think that rubble mound groins present a lot greater liability  
25 than what exists now.

1           At the moment it is possible that you can get a  
2           puncture wound in your foot if you don't see the groin if the  
3           sand level is very high. At the moment they show so there is  
4           not this potential. A rubble mound groin can cause, if I may  
5           remind you, drownings. In Galveston there are many. I'd  
6           rather have a puncture wound in my foot than be drowned, I  
7           mean, I don't know about you.

8           There's more. The beach replenishment is required  
9           according to the Army Corps of Engineers who met with a group  
10          of homeowners approximately three years ago, and he said there  
11          is a requirement for beach replenishment, according to their  
12          studies, for every two years. Now in addition to the cost of  
13          replenishing the sand, one must remember the traffic in  
14          replenishing the sand.

15          Thank you very much. I don't know whether we have  
16          been given incorrect information or insufficient information,  
17          but the information that we have is rubble mound groins.

18                 CHAIR TUCKER: Alan?

19                 DEPUTY ATTORNEY GENERAL HAGER: I just wanted to  
20          come back. I think my duty may be trying to mediate between  
21          the two opposite ends on the visual impact of this.

22                 If you will look at Figure 2.2, it will say that  
23          the -- it will show you where -- you know, we're talking really  
24          of the oceanward end, a plus-seven feet, mean lower low water.  
25          That's the lowest the water will ever go. I mean, and a lot of

1 this will be buried anyway.

2 I didn't want you to get, in this case, too grave  
3 a view that the visual impact is more intrusive than it really  
4 is. I think the diagram, Figure 2 2 of the draft EIR, explains  
5 it quite well.

6 CHAIR TUCKER: Could you also comment on this  
7 issue of liability in terms of what has it cost the State so  
8 far? Can you disclose that?

9 DEPUTY ATTORNEY GENERAL HAGER: I honestly don't  
10 know. The point of it I think is maybe there have been minor  
11 injuries, but there's a real possibility for a major injury, I  
12 mean, what if somebody -- a surfer is impaled on this thing, a  
13 young person, a great future ahead of him, becomes a  
14 quadriplegic or something, nerve damage -- the potential is  
15 great. And that could be millions of dollars.

16 CHAIR TUCKER: Okay, anybody else who would like  
17 to say anything?

18 Yes, ma'am.

19 MS. HUDSON: My name is Sandra Hudson. My husband  
20 bought our lot in 1945. I have pictures to show me sitting on  
21 the sand with my children, never seeing a grain, but the sand  
22 in front of our house is almost identical to the time we bought  
23 our lot.

24 I also wonder why we're arguing about liability  
25 when this could have been solved very easily. Why, if the



1 State wanted to get rid of the liability, with private  
2 homeowners why don't they just cut and cover them and then  
3 nobody would have to worry?

4 CHAIR TUCKER: Anybody else have anything?

5 DEPUTY COMMISSIONER MANNING: I appreciate all  
6 your comments. The environmental documents on this are fairly  
7 extensive, and having reviewed them and listened to the  
8 comments, I think there are significant benefits from this  
9 project in terms of enhanced public access, restoration of the  
10 beach, homeowner protection, elimination of existing hazards --  
11 which I think are significant, and the fact that the vast  
12 majority of the homeowners are in favor of this project also  
13 speaks to some extent of the impacts.

14 That is not to minimize the nuisance impact during  
15 construction and other effects of the project on the dissenting  
16 homeowners, and I understand that is a real concern, as well as  
17 the fact that there are visual impacts from this project which  
18 are different in nature than the current ones.

19 But on balance, having reviewed the EIR fully and  
20 having listened attentively to your comments and objections,  
21 I am in favor of certifying the EIR and the lease.

22 DEPUTY COMMISSIONER SIANCELL: I would just like  
23 to add, although I did not read the EIR report itself, I have  
24 been briefed by staff on several occasions about this issue.

25 I feel that even after hearing the testimony from

1 those who are not willing to join the other homeowners who  
2 decided to go forward with this, that there still appears to be  
3 a compelling reason to proceed along the lines in which it's  
4 being recommended by the staff, and at this point I would be  
5 indicating that my support is for the staff recommendation.

6 CHAIR TUCKER: Okay, the staff recommendation is  
7 that the EIR be certified as sufficient and that the lease be  
8 granted for this purpose it's been described.

9 DEPUTY COMMISSIONER MANNING: I move the  
10 recommendation.

11 CHAIR TUCKER: Mr. Manning moves.

12 DEPUTY COMMISSIONER STANCELL: Second.

13 CHAIR TUCKER: Dr. Stancell seconds. The votes  
14 are two-to-nothing in favor of the staff recommendation.

15 Okay, Item 36

16 MR. WARREN: Lance Kiley, Division Chief of Land  
17 Management and Conservation will present that item. Mr. Kiley?

18 MR. KILEY: Good afternoon, Commissioners. Item  
19 36 is the result of about a year's worth of discussion between  
20 myself, my staff, and some consultants. It asks the Commission  
21 to approve a set of criteria for investment of money that's  
22 been accumulated in the School Land Bank Fund.

23 At this point we're just asking for approval of  
24 the criteria themselves. We would come back to the Commission  
25 in the future for a specific process to invest the money,

1 using these criteria as a guide.

2 CHAIR TUCKER: The criteria that were developed,  
3 this is the result of a contract that we have?

4 MR. KILEY: We contracted with Williams and  
5 Kuberbeck to help us with this. This is the result of their  
6 best advice and our best input.

7 CHAIR TUCKER: And that Stirs concurs?

8 MR. KILEY: Stirs is being a little bit coy about  
9 this. I am not sure exactly what their concerns are. I did  
10 give them an opportunity to get back to us with comments prior  
11 to the time of the meeting, and they did not do that -- with  
12 specific comments.

13 CHAIR TUCKER: Okay, well, I mean my own view  
14 would be that we can proceed on this, but I would ask you to  
15 notify the Commission if there's concerns expressed by Stirs so  
16 we would know exactly where they're at on this, because I want  
17 to make sure that they're involved.

18 MR. KILEY: Certainly -- as we would with the  
19 process too.

20 DEPUTY COMMISSIONER MANNING: I move the item.

21 DEPUTY COMMISSIONER STANCELL: Second.

22 CHAIR TUCKER: Item is approved.

23 I have one other item, is there anything else  
24 anybody else has?

25 I'd like to return just briefly to these dredging

1 issues, and I have had a chance to talk to Mr. Manning and to  
2 Mr. Stancel!, and it's our -- the feeling of all three  
3 Commissioners is that any time that the Commission and  
4 Commission staff is going to change fees in any way, that we  
5 need to be notified.

6 And I think it should be taken up as a Commission  
7 matter, because our experience in the past has always been  
8 exactly what's happened on this, that is, the fee is raised and  
9 immediately we hear all kinds of complaints and we end up  
10 having a public hearing anyway.

11 So it seems to me the better process is let's  
12 notice any fee raises that we're going to have, give the public  
13 an opportunity to comment and be heard before the things take  
14 effect, I think we'll avoid, you know, some of these after the  
15 fact type situations that get a little awkward.

16 Okay, anything else?

17 MR. HIGHT: Item No. 40, Mr. Chairman.

18 CHAIR TUCKER: I didn't see that.

19 MR. HIGHT: Is authorization for litigation to  
20 eject a trespasser at Lake Tahoe. The individual has been  
21 notified over 30 times of his necessity to come under lease.  
22 He has refused, and we seek the authorization for the ejection.

23 CHAIR TUCKER: Okay, and he is not a disabled  
24 Vietnam veteran?

25 DEPUTY COMMISSIONER MANNING: Move the item.

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DEPUTY COMMISSIONER STANCELL: Second.

CHAIR TUCKER: The item is approved and the meeting is adjourned.

(Whereupon the proceedings concluded.)

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CERTIFICATION

STATE OF CALIFORNIA

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COUNTY OF VENTURA

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I, Laura Gullette, hereby certify that the foregoing pages 1 through 65, inclusive, are a true and correct verbatim transcript of the proceedings as reported by me.

WITNESS my hand this 12 day of November, 1990, Ventura, California.

  
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LAURA GULLETTE