MEETING
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 6028
SACRAMENTO, CALIFORNIA

ORIGINAL

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

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

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

MEMBERS ABSENT

NONE

STAFF PRESENT

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

ALSO PRESENT

Mr. Jan Stevens, Assistant Attorney General

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Adjournment

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

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

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

Hearing none, they'll be approved as presented.

We have a report of the Executive Officer.

EXECUTIVE OFFICER NORTHROP: Thank you, Mr. Chairman.

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

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

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

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

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

CHAIRPERSON CORY: Okay.

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

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

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

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

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

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

We ask your approval on that project.

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

EXECUTIVE OFFICER NORTHROP: They have no
objection. In some cases --

CHAIRPERSON CORY: You have a sentence in here that I'm not sure I understand. "Staff only recently was able to advise the applicant of permit requirements..."

What precluded you from advising them until recently?

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

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

The bulk of it is, I believe, is upland of the State land, the State boundary.

CHAIRPERSON CORY: Any questions?

EXECUTIVE OFFICER NORTHROP: Les Grimes from the staff.

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

CHAIRPERSON CORY: Any further questions?

MR. STEVENS: May I simply clarify the status. In effect, I believe you'd be authorizing an emergency permit since you're authorizing work to commence immediately
and any work done pursuant to this letter is validly done and cannot be undone. So it's in effect a delegation to the staff to issue an emergency permit.

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

MR. BELL: I have none.

CHAIRPERSON CORY: Okay.

EXECUTIVE OFFICER NORTHROP: Thank you very kindly.

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

Applicant has requested that he be allowed to begin his bank protection project prior to finalizing of a
State Lands Commission permit so that he can realize substantial savings. The proposed project is exempt from CEQA as a minor alteration to land and staff expects to submit a formal permit to the Commission for approval at the Commission's August meeting.

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

CHAIRPERSON CORY: Any objections?
MR. BELL: No. Fine.
MR. LYTTON: No.
EXECUTIVE OFFICER NORTHROP: Thank you very kindly.
Number three on the regular calendar --
CHAIRPERSON CORY: Pardon me, Mr. Northrop.
Do you ever thank people unkindly?
EXECUTIVE OFFICER NORTHROP: Well, once in a while.
CHAIRPERSON CORY: I just thought I'd check. Go ahead.
EXECUTIVE OFFICER NORTHROP: Lots of them sometimes. Particularly when they -- Never mind. I won't go into that.
CHAIRPERSON CORY: Okay.
EXECUTIVE OFFICER NORTHROP: Number two will be, staff has asked to put number two over and number three...
off calendar and to move numbers C-13, 14 and 15 to the regular calendar.

CHAIRPERSON CORY: 13, 14 and 15?

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

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

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

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

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

Is there anybody in the audience on those items?

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

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

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, there
is no significant information to transmit at this time.

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

Okay. Going on the regular calendar, Item 1.

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

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

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

CHAIRPERSON CORY: Okay.

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

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

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

Now, pursuant to the Commissioners' concerns last meeting, the staff has done the following: First of all, sought to achieve a compromise between the surfers and the district; second, examine possible intertidal zone of Deadman's Reef; third, examine the legal implications of a negative declaration; fourth, consulted with Dr. R. J. Seymour of Scripps on the consequences of rock removal in the intertidal zone; and, finally, consulted with the Corps...
staff in San Francisco. The result of that staff work as follows: First, there appears to be no compromise possible between the parties. The surfers insist on no rock removal pending a comprehensive study of the site, and the district insists that they need some rocks from the intertidal zone. The alternatives, apparently our best information, inland sites are not practicable because of enormous costs for bringing rocks into the area and also road limitations, weight limitations on the road from Garberville to Shelter Cove. Also, the road leading down to the beach is very steep and unstable, and this would be a problem in bringing trucks in.

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

Now, the best information we have in consultation with the Coastal Commission -- of course, the Commission only has jurisdiction of those sites in the area below high water in those sites. The Coastal Commission has stated that there would have to be additional environmental workup of those sites because they were not considered in the
initial environmental document and that there would be problems for sites above mean high tide that would have to be looked at from the standpoint of esthetics and geographical significance, and the intertidal sites would likely be a problem due to biological life and marine life in the rock areas that they have proposed.

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

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

This information could have been brought forth and should have been brought forth at the time that the environmental document was processed and there were public hearings on the matter. But we want to emphasize that the Commission is not bound, is not limited to the negative declaration. They do not have to make a finding on the adequacy of the negative declaration itself, and they should
and must examine all information on the record in making their decision.

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

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

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

Now, once they do take rocks from the intertidal zone, they'll be limited first to the northerly one-half, that side closest to the breakwater depicted in yellow on the chart. Secondly, they'll be limited to a maximum of
570 rocks which is roughly one-fourth of the estimated rocks in the intertidal zone by number. They will be limited to rocks that are 24-inch maximum. That is a word of art which fulfills engineering specifications for breakwater construction.

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

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

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

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

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

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

MR. HADLY: First of all, the removal time as we understand it would be in the late fall, November, December. They would have to remove all the rocks that were suitable
for the breakwater and accessible at that time. At that
time the sand layer will have fallen somewhat so there will
be more rock exposed. They'll have to take all the rock
above high tide between the breakwater and Deadman's Reef
and also at the gulch itself they'll have to take all
accessible rocks from above the intertidal zone that they
can from the base of the gulch they can get to.

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

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

CHAIRPERSON CORY: They've got to fit through a
24 by 24-inch --
MR. HADLY: They have a device that determines the suitability.

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

MR. HADLY: Right.

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

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

(Laughter.)

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

CHAIRPERSON CORY: You're serious.

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

(Laughter.)

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

Okay. I do feel more comfortable about a specified number than 25 percent and then arguing later
as to what 25 percent was and what's a rock and what's a pebble and what's a sand grain. I can see all sorts of litigation over that.

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

MR. BELL: No.

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

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

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

MR. LYTTON: Okay.

CHAIRPERSON CORY: Okay.

MR. LYTTON: One other question.
When you put the rocks through the screen, I assume that they're going to take the rocks off the top first and they're not going to be destroying the reef in the process of trying to find the biggest rock?

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

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

MR. HADLY: Right.

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

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

CHAIRPERSON CORY: Okay. Mark.

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

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

A month ago I came before the Commission to talk about this permit and to ask for possible conditions on the
permit so that we could protect the surfing resource at Shelter Cove, specifically, at Deadman's Reef. Today we're back to address today's agenda item in light of Dr. Walker's report which I've just given to you. If you will look at page 4 of Dr. Walker's report, on the second paragraph down which starts out, "In summary," I'd like to read that to you if I may.

It says:

"In summary, removal of a significant portion of the larger rocks, would definitely alter the characteristics of the surf site. Without a detailed bathymetric survey and long-term observation of this site under different conditions, the effect of selective removal of rocks from certain areas to reshape the reef should not be done. Removal of the larger surface rocks would certainly destroy the integrity and stability of the reef. Selective removal of a small percentage of rocks protruding high above the surface, could be beneficial. Removal of rocks above mean high water should not adversely effect the surf, and may extend ride lengths at high tides. Alternate sources within one-half mile down the beach could be investigated. If
removal of rocks to reshape the reef is desired, this should be done only after the existing conditions have been documented and effects of alterations based on experience and theory have been evaluated."

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

I say that because the conditions state that prior to using intertidal rock, the district should utilize all readily accessible and suitable rocks. I think that's a pretty conditioned condition in that sense and that it pretty much is vague and allows the developers of the jetty to use virtually any rocks they want since they have asserted all along that it's not feasible for them to use the alternate
sites. I think they will say that these are not readily accessible and suitable and they will go ahead and use the 570 rocks from Deadman's Reef which would not be acceptable to the surfers.

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

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

Thank you.

CHAIRPERSON CORY: Can I ask you a question about
Kimo Walker?

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

MR. HOFFART: Yes.

CHAIRPERSON CORY: What is his professional capacity with them?

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

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

MR. BELL: No.

MR. LYTTON: You retained this man as your expert?

MR. HOFFART: Yes.

MR. LYTTON: Did he change his opinion from initially saying that there could be damage to the more certain opinion expressed in this letter?
MR. HOFFART: Well, the only -- No. I think the only change in opinion I heard was what was mentioned earlier. In this letter is where he says the phrase that it could be damage came out of, and I think the later phone call said that it would be damaged. But I think that was a clarification. I don't think there's been any change of position, no.

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

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

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

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

MR. LYTON: I have no other questions.
CHAIRPERSON CORY: Thank you very much. Okay.

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

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

CHAIRPERSON CORY: Okay.

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

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

Mr. Thoresen's letter which you have there states that in his opinion removal of 570 rocks from the reef would harm surfing conditions. Rick has been surfing at Deadman's
Reef for approximately 15 years and has lived all his life within 20 miles of Shelter Cove. He indicates Dr. Seymour has stated to him that removal of rocks would only have adverse effects on surfing conditions at very high tide with small swell conditions. He states further: I must make it clear that the smaller wave sizes, two to four feet, occur most frequently at Deadman's Reef and the most desirable surfing waves usually occur at high tide. Deadman's Reef is predominantly a high tide surfing break.

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

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

I'd like to comment that the alternatives we've
proposed have been tailored with considerations of esthetics in intertidal habitats as we have not recommended removal of rocks from the significant intertidal habitat in the Point Delgado area or at Point No Pass, nor have we recommended major alterations of land forms at the Point No Pass area which would have significant esthetic impacts.

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

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

I would like to read part of his report discussing
these alternatives.

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

"These stones in the stream are more suitable for breakwater construction than the ones on the reef because of their angularity. I understand the reason for taking stones from the reef is economics. A loader would have to wait for low tides in order to operate" on the reef. "This limits his production and, therefore, increases costs. Working in the streambed, the
loader would have to sort more stones but
could work at nearly all tide levels. The
sources of rock of similar quality are found
along the beach and in reefs further down the
beach to the southeast. Rocks could be taken
from these areas without any known adverse
effect on surfing.

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

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

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

This permit, as conditioned, we feel is
arbitrary, unplanned rock removal and is irresponsible to
the needs of surfers. The effects to the reef and the
waves which break over the reef are not substantiated. The
conditions are vague and we believe unenforcible. The study which we recommend would investigate potential for rock removal for enhancement purposes. The study would map the bathymetry. Kimo Walker says the mapping of the bathymetry is essential before any consideration of rock removal from the reef. We did sit on the beach and pick out about a dozen rocks which it's obvious could be removed without adversely affecting the surfing conditions, but we're talking about a substantial amount more than this.

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

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

So, at this time, without further commenting on these conditions, -- well, I could comment further that these rocks that says, Condition E says that they will be taken from the upper layer only and the staff indicated that the sand layer will drop by the time they intend to remove the rock so more rock will be exposed. Dr. Walker's report states that when we looked at the reef, there was a two- to three-foot elevation difference because of the sand layer where it is now on the northwest side of the reef. Now,
after the sand layer drops, we're talking about a two to
four or five-foot difference in elevation. When you start
messing around with the shape of the reef and the change
in depth along the sides of the reef, this will affect the
waves. As I said, this is an arbitrary number of rocks.
This number came up not from a study, but from a
misconceived or misinterpreted permit application.

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

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

The Department of Boating and Waterways has
investigated studies for creating a surf site down in the
El Segundo area and they would have capacity for undertaking this type of a project. If no State or Federal agencies would be willing to help undertake this study, and the Harbor District was unwilling to, perhaps either the permit should be denied outright or the surfers would be requested to undertake the study on their own provided the results would be accepted.

CHAIRPERSON CORY: Questions from Commissioners.

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

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

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

MR. PRATTE: Within existing permits. Now, these 300 rocks further down the beach are not within an existing
permit and that's why we recommend pursuing these alternatives first.

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

MR. PRATTE: We would be in favor of the Corps of Engineers supervising a rock removal project which would be planned and well-designed following a study. However, now, we find this unacceptable, this plan because it's not a plan. It's a compromise which really doesn't resolve the issue of protecting the interests of the surfing community. The Condition A states something about readily accessible rocks which permits exist. Now, there are permits for rocks above mean high water and at the mouth of the gulch. But readily accessible, there's rock in the mouth of that gulch. But going down there with a Cat and removing around their loosely consolidated sediments which is gravel, sand, cobbles and boulders all loosely consolidated and five to ten feet high at the mouth of the gulch, there's possibility that the whole base of that is underlain by large rock which has not been investigated. There's going to be a major -- part of this project is widening that road coming down the bluffs and that is a major cut up to ten feet directly into the
seacliffs and I know the district is capable of moving earth. We feel that there is an adequate amount of rock in these alternative sites and there hasn't really been an established need for going on to the reef.

MR. LYTTON: I have no further questions.

CHAIRPERSON CORY: Mr. Bell.

MR. BELL: No, I have no questions.

MR. PRATTE: Thank you.

CHAIRPERSON CORY: Tony Gerschler.

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

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

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

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

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

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

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

In beginning my comments here on this particular project, I'd like to point out that every rock counts.

In regard to Dr. Walker's reputation and his credentials, I think he was picked out basically because in Dr. Seymour's report to deny, then the Department of Navigation and Ocean Development cited Dr. Seymour's, Dr. Seymour's report cited Dr. Walker's work in Hawaii oftentimes. We thought if we were to pick an objective expert, that would be the person to pick to hire to do the report. The fact that we
hired him didn't determine the outcome of the report.

We simply hired the best person we knew in the field, and that was Dr. Kimo Walker. His reputation is widely known.

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

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

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

First of all, WSA does not oppose breakwater construction whatsoever. Surfers, many among us, are boaters, fishermen, divers. You come to love the ocean in one way, it's very easy to do it in another. In fact, Hobie Alter, one of Southern California's surfing pioneers, invented the Hobie cat. Many of the opposition, the local opposition at Shelter Cove there, there's fishermen and boaters among them who happen to also be surfers. So we don't really want to characterize it as a
surfer versus boater versus anybody else type of conflict. However, we also feel that the public trust, the public tidelands goes to the benefit of both boaters and surfers. Let's put the shoe on the other foot. I was thinking on the plane on the way up here this morning, I thought, what if I was flying to Sacramento to bring to the State Lands Commission a proposal to build an artificial surfing reef taking the rock away from the breakwater that exists now at Shelter Cove. What would your reaction be to that?

CHAIRPERSON CONY: Pretty good --

MR. GERSCHLER: Well, that's our situation in the converse. From our point of view, we're a valid recreational pasttime and it's just as ludicrous in our view to harm surfing to the benefit of any other sport or pasttime, especially in consideration of some of the alternative sources of rock. We feel that the project, as Dr. Walker has pointed out, would lessen and perhaps destroy surfing at medium or high tides which seem to, in looking at this, removing of the rocks, those big rocks are not going to affect the surfing, that's just not true. The rocks are what make the wave break and that's what gets you the surfing. The shallower the shoaling conditions, the better the surfing. And this situation moving significant amounts of rocks and, again, we use that word rather loosely, but a quarter of the reef is going to alter
the surfing in that immediate area and, secondly, it's
going to affect surfing by all probability on the remainder
of the reef because the effects of tide and wash on and off
the reef. These are the things that were pointed out before
as needing more study.

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

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

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

I guess I'd like to wrap up my comments by saying
that the whole world is rock. Okay. And this breakwater,
if it needs to be built, it must not be at the expense of
other recreational resources, especially surfing because in this sense we stand to lose it all. Deadman's is a significant surfing break in the area. The growth of surfing will not decline, the demand for surfing in that area will not decline in the years to come. It will grow with the spread of modern-day wet suits and modern-day equipment and leashes and what not, it will continue to grow in this area. If you were to approve this permit, it would be compromising a significant surfing resource in that area.

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

Just echoing my colleagues, the WSA does not object to any reasonable alternative plan which does not take rocks from below mean high water and in good faith will
assist the applicant in investigating these possibilities.

I thank the Commission. I'll answer any questions you might have.

CHAIRPERSON CORY: Questions?

MR. BELL: Not really.

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

MR. GERSCHLER: Yes, sir. Well, I would say at this point 570, going out as far as they propose, even if enforced and strictly supervised would have a significant impact on the surfing and would not be acceptable. The 12 rocks that were mentioned before in Dr. Walker's report which are almost entirely out of the water, they're only partially submerged, I would say definitely would not have an impact on the surfing. In between, there is a gray area which would require more study. That's why I'm saying we're not just asking for a gratuitous type of study. If they come out with a report, a reasonable, thoroughly exhaustive report that says 450 rocks is the number and that's been
done with surfing considerations taken into mind scientifically, then we can't help but support that. We can't help but endorse that. That's all we're asking for and that's all we're saying is at this time that study has not been made, that information is not available.

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

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

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

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

MR. LYTTON: Thank you.

MR. GERSCHLER: Thank you.
CHAIRPERSON CORY: Okay. Mr. Zeke Grader, you wish to speak?

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

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

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

As I say, these people have been using their
breakwater for, well, been using Shelter Cove for over 50 years now as commercial fishing. It's probably been the longest ongoing activity at Shelter Cove is this use as an anchorage.

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

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

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

(Laughter.)

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

(Laughter.)

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

CHAIRPERSON CORY: Questions?

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

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

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

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

MR. LYTTON: The New Motor Vehicle Board.

CHAIRPERSON CORY: It's one of those things.

MR. BELL: The Harbor Recreation, Conservation --

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

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

CHAIRPERSON CORY: They have not granted it?

MR. BELL: Is it within jurisdiction of the Harbor Recreation, --
EXECUTIVE OFFICER NORTHROP: It's within our jurisdiction.

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

MR. GRADER: Right.

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

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

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

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

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

CHAIRPERSON CORY: Why did you spend all that time counting rocks when you should have been counting engine blocks? Why didn't the staff anticipate our needs?
EXECUTIVE OFFICER NORTHROP: I really don't know.

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

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

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

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

CHAIRPERSON CORY: Okay.

MR. LYTTON: Thank you.

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

Good morning.

MR. SCOTT: Good morning.

CHAIRPERSON CORY: Identify yourself for the record.

MR. SCOTT: My name is Jerry Scott. I'm counsel for the Humboldt Bay Harbor Recreation Conservation District, and this is Jack Alderson, Chief Executive Officer.
I would like to, for the record, give to you a copy of the letter dated June 27, 1979, signed by Assemblyman Bosco and Assemblyman Keene supporting the project which was referred to by Mr. Hadly. I'm sorry, I just have one copy.

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

MR. SCOTT: Thank you.

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

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

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

MR. HADLY: Mr. Chairman, David Hadly again, staff counsel.
It's our understanding that the Corps of Engineers have specified requirement as a technical -- they mention 24-inch rock before. I think there was some confusion over whether they meant diameter or circumference or what it was. But in clarification of that issue, as a technical term, the Corps has a device to measure this. This is a standard breakwater size and apparently the Corps doesn't want rock that's too big because if it's a large rock that's impermeable, it could be knocked off. So there's a balance between being too big and too small and this balance is achieved by use of the 24-inch specification.

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

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

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

CHAIRPERSON CORY: Okay.

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

CHAIRPERSON CORY: Any questions from members of the Commission?

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

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

CHAIRPERSON CORY: Okay. Read them and weep.

What's the wish of the Commissioners?

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

CHAIRPERSON CORY: I'm just sitting here. That's the advantage of the gavel. I'm waiting for a motion.

If there's none, lacking a motion, there is no action and the permit will die.

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

CHAIRPERSON CORY: Is that with the staff recommendations?

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

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

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

MR. BELL: Tide.

MR. LYTON: -- tide first before ever getting to the intertidal zone.

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

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

MR. TROUT: It should be "accessible."

CHAIRPERSON CORY: If "readily" were deleted -- you've got two easel words there. Can you get by with one? What is the significance of that in terms of trying to say to the world in terms of this charge of lack of specificity of the requirements because I would think that
the district should make a real serious effort to take those that are there on the beach first before you go out; and the purpose of that is to sort of draw attention that we're serious about trying to minimize if you can get by with something less than 570 --

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

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

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

MR. PRATTE: Tor Pratte.

CHAIRPERSON CORY: What does that do to your work?

MR. ALDERSON: We have been in a position of trying to discuss compromise with the surfers and with your staff and with the staff of the United States Army Corps of Engineers. During that time, of course, in any bargaining position it depends on who's got the gun to the head of the other person. That's the way it goes as you shift back and forth. "Readily accessible" indicates those rocks
the reference to making sure there is no monopoly there.

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

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

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

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

There are certain benefits to Mr. Machi having fee title. He clearly owns the land adjacent to it. To the extent he wishes to use his property in a commercial vein --
I don't know what he's doing there, whether he's selling fuel, food, bait, supplies, whatever -- that's his property, and he should be allowed to do that, I think. You're not objecting to that?

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

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

MR. GRADER: Right. We understand that.

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

MR. GRADER: Sure.

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

MR. SCOTT: You have stated the issue correctly. Mr. Machi owns the access. I believe there's some reference to access by children swimming, little old ladies, and ladies. Without that access over private property, those people won't
get to the beach. The only other access to the beach is over rough terrain. My wife and children, perhaps, could not navigate that.

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

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

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

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

CHAIRPERSON CORY: Fine.

MR. HOFFERT: My name is Mark Hoffert, and I'm a resident of San Francisco. I'm a surfer, and a member of the Western Surfing Association since 1971. I am active in their environmental division, and I have occasionally
worked as a spokesman for the WSA on this project.

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

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

Now as far as recreational interests are concerned, I think that surfing is a very important recreational interest within the state and also within Shelter Cove. I know that I have personally been surfing at Shelter Cove for a couple of years now. I only occasionally go there, because it's five hours away from my home, but I know I speak for a lot of other surfers who occasionally make the trip up there.
too. Since we're talking about a 25-year lease here, I think it's very important to consider the growth of surfing in the future.

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

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

Within the period of this 25-year lease, I think it's inevitable that we will see massive increases in surfing...
growth along the northern coast, including at Shelter Cove, which happens to be one of the best surfing areas in Northern California -- for the same reason that it's a good site for a harbor of refuge: it's protected from the prevailing northwest winds. This creates a calm water surface, which is conducive to surfing, which can be found in few other places along that coast. I think you could count them on one hand, and access in each case is usually more difficult than access is at Shelter Cove, where there's at least a road going out to the beach. Also --

CHAIRPERSON CORY: Can I stop you on that point?

One of the countervailing problems is that the road going out to the beach is currently privately owned.

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

CHAIRPERSON CORY: Okay. Go ahead.

MR. HOFFERT: Also, I would like to state that the surf potential for this one particular reef is a lot more than the proponents would tend to make it appear. Mr. Machi stated that only one surfer could stand up on a wave at a time. That's not true. I can show you a picture just taken last week of two surfers on a wave at one time.
I would also like to point out that waves generally come through in periods of ten to fifteen seconds. So even if you only had one per wave, there is a potential of having hundreds of surfers ride a wave in one hour.

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

I think until these alternate sites have been considered and exhausted, there's really no reason to even consider the use of the site at Dead Man's Reef. I think there's an excellent chance that the surf will be detrimentally harmed if the rocks are taken from that site. There is expert opinion on both sides. I was at a meeting
at the Army Corps of Engineers. Their wave experts, George Domurat and Doug Pirie, both said that definitely if the rocks were taken it would affect the surf there detrimentally.

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

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

Further, I would ask you that if you are going to
rely on the Army Corps of Engineers to make the most restrictive permit and rely on those restrictions in order to guarantee the preservation of the surfing resource at Dead Man's Reef, that you postpone your permit until after the Army Corps has made a decision so it will be definite that the resource will be protected.

That's all.

COMMISSIONER LYTTON: I have no questions.
COMMISSIONER BELL: I have no questions.
CHAIRPERSON CORY: Okay.

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

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

I'd like to point out that at low tides, both the breakwater site and the intertidal reef at Dead Man's Gulch are both high and dry, the breakwater and the reef.
At higher tides the intertidal reef, Dead Man's Reef, is submerged, and waves break along and across this reef, providing excellent surfing opportunities. Also, at higher tides the breakwater is nearly submerged, and that causes boat launching and landing difficulties because of wave overtopping at high tides.

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

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

However, the plans presented by the harbor district propose the design as 12 feet above mean sea level or 9 feet above mean high water. The harbor district's contract with their engineers states that the design will be prepared as built plans following construction to reflect what has
We met with representatives of the harbor district the day before yesterday to discuss the issues, and it was reported to us that the harbor district doesn't have the money to build this optimum, large-size breakwater, that they have $10,000 to $12,000 to move rock, and that the amount of rocks to be used has not been decided yet, and that they wish to build it the best way they can with the amount of money available. If that is not enough, then they will have to acquire more money. Essentially, they want to use available resources to do the most effective job possible.

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

CHAIRPERSON CORY: Okay.

MR. GALATI: Good morning. My name is Douglas Galati, and I am a resident, a home owner, and a taxpayer of the northern coast of California. I am also a resident surfer of the area. I come here for myself and as a representative of the local surfing population.
The only thing I want to say from the very beginning is that the surfing population is here to contest the condition in calendar item number 21 as we received last time, the condition marked "D":

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

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

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

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

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

"We submit this resolution to the State Lands Commission as a reasonable and equitable accommodation to the public's interest in surfing and boating at Shelter Cove."
A. Based on factual information, the following recommendations represent realistic and feasible alternatives to rock removal from Dead Man's Reef. The Humboldt Bay Harbor Recreation and Conservation District shall pursue the following alternative rock sources rather than rock removal from Dead Man's Reef:

"(1) Point Delgada to the breakwater site: utilization of rocks, and previous breakwater materials in the vicinity of the breakwater.

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

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

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

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

"These available alternatives --"

CHAIRPERSON CORY: Pardon me for interrupting.

MR. GALATI: Yes, sir.
CHAIRPERSON CORY: Can somebody show us on this photograph where these things are?

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

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

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

CHAIRPERSON CORY: Fine. You can stand over there.

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

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

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

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

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

MR. PRATTE: That's right in here (indicating),
submerged at high tide and exposed at low tide.

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

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

CHAIRPERSON CORY: Let them finish.

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

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

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

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

"A comprehensive study of the surf site at Dead Man's Reef shall be required, utilizing techniques for surf site analysis as set forth by Dr. James R.
Walker in 'Recreational Surf Parameters'. This analysis shall be undertaken by representatives of the surfing community in cooperation with Humboldt Bay Harbor Recreation and Conservation District.

"The purpose of such a study would be to identify the characteristics of the surf break at Dead Man's Reef and to investigate potential for rock removal for enhancement purposes only.

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

"Dead Man's Defense Committee and Western Surfing Association agree to abide by the results of such a comprehensive analysis. The surfing community is seriously opposed to tampering with Dead Man's Reef without a study."
"If no comprehensive surf site analysis is deemed necessary as a condition to rock removal from Dead Man's Reef, then the surfing population demands that a performance bond in an amount equal to the cost of breakwater improvements shall be placed by the Humboldt Bay Harbor Recreation and Conservation District to guarantee no adverse effects to the quality of waves for surfing at Dead Man's Reef.

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

I will accept questions.

COMMISSIONER LYTTON: I have no questions.

COMMISSIONER BELL: I have none.

CHAIRPERSON CORY: I have some questions of the staff.

How in the hell can we get into this mess on a negative declaration? It seems to me the whole issue here is environmental considerations, and that's the whole purpose of an environmental impact statement. Somehow we
got to this point, and part of our findings are that there is no environmental impact, and it seems to me that the arguments that both sides are presenting to us relates to the fact of what's going to happen to the environment if we allow this to go ahead.

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

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

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

CHAIRPERSON CORY: Let me ask the lawyers where we are on that issue. We've heard a lot of argument. I'm not a wind and wave expert. I don't know whether the other
Commissioners are. I don't know whether rocks cause surf
to be there or not be there. Apparently the issue was not
resolved at the Corps of Engineers meeting.

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

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

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

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

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

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

CHAIRPERSON CORY: If Skylab is falling --

MR. HIGHT: And wipes out the reef --

CHAIRPERSON CORY: Can we consider that suddenly
somebody is telling us something new, like that Skylab is going to fall? I presume that people would not have put it up there if they thought this thing through a little further.

I'm just curious: where are we legally?

MR. TROUT: There are a couple of points.

CHAIRPERSON CORY: I'd like to hear from the lawyers. I want to know from you guys where we are legally.

I just really am puzzled.

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

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

However, I don't believe the Commission is
foreclosed from accepting additional evidence with respect to environmental effects and from requiring a separate evaluation.

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

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

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

COMMISSIONER LYTTON: Let me ask the question again.
From the legal perspective, must we exclude the contrary evidence that's been presented in this hearing?

MR. STEVENS: No.

COMMISSIONER LYTTON: We have the discretion to consider it?

MR. STEVENS: Yes.

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

COMMISSIONER BELL: It's our best judgment.

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

But I believe that the Commission does have the authority and, actually, the duty to exercise its discretion and consider any relevant evidence that comes before it with respect to its own responsibility in issuing a permit. The
Commission has independent authority outside the CEQA process to do so.

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

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

MR. ALDERSON: May I answer that one?

CHAIRPERSON CORY: Certainly.

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

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

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

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

COMMISSIONER BELL: Thank you.

CHAIRPERSON CORY: In my recollection of the last meeting we had on this subject, there was a discussion of some limitation on the amount of rock to be removed. I don't
see that in the calendar item today.

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

MR. GALATI: May I address that issue?

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

MR. SCOTT: May I address that?

CHAIRPERSON CORY: Go ahead.

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

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

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

CHAIRPERSON CORY: So you are, by your statement,
accepting those two conditions as well, that you will only
be removing rock from above mean high tide? Is that correct?

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

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

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

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

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

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

CHAIRPERSON CORY: If you have one condition that you can only remove above high water, and another one that you can only remove 25 percent, if you accept both conditions you've got a problem, I think.
MR. SCOTT: No. The 25 percent limitation applies between the low and the high water mark.

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

MR. SCOTT: On the reef only.

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

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

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

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

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

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

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

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

one year." It is again reiterated later on in the permit, condition 11(c): "Said development shall be commenced on 
or before (no time specified) and shall be completed on 
or before August 7, 1975." That's in black and white.

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

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

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

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

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

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

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

MR. NORTHRUP: True, Mr. Chairman.
CHAIRPERSON CORY: It's the surfers' opinion that if 25 percent of the rocks between low and high water are taken the surf will be disrupted?

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

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

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

MR. ALDERSON: It's 2,400.

MR. SCOTT: It's 2,400 rocks. Visible?

Anyway, 2,400 rocks, and up to 25 percent could be removed, which would allow the removal of 600 rocks.

CHAIRPERSON CORY: So your interpretation of that 25 percent is number?
MR. SCOTT: It's not my interpretation. I am echoing what the Coastal Commission staff told the --

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

MR. SCOTT: Number. Number.

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

MR. SCOTT: Well, that's fine.

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

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

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

CHAIRPERSON CORY: You could probably for $14 pick up 600 rocks that size (indicating) but it wouldn't do you any good.
MR. SCOTT: I assume the contractor and the engineer would try to get the larger rocks.

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

(Laughter.)

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

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

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

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

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

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

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

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

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

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

I don't know what that means, and I don't know
what people can live with, but that seems to me to be a
nonsubstantive requirement. If it's a viewshed, they want
to be able to see 25 percent of the rock area visually
that they saw before or something like that.

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

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

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

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

By the same token, we have appeared before the
regional commission, and the Regional Coastal Commission
voted unanimously in support of this project. There were
some negative comments brought forth at that meeting by the
surfers, so I don't necessarily feel that the evidence that
you are hearing is being heard here for the first time.
This was reviewed by the Regional Coastal Commission.

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

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

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

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

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

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

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

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

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

MR. SCOTT: You may, certainly.

CHAIRPERSON CORY: I will.

(Addressing Mr. Alderson) The last time you were here you talked about concern for the environment. What is it you really want to take? Twenty-five percent of what?
What do you envision those permits limiting you to, and what
do you want to take?

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

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

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

We have talked with surfers on scene down there
who have said to us that they will work with us, and we have
promised to work with them, on the removal of some of those
larger rocks. One surfer indicated he used to be a choker
setter, the guy who goes out with the wire and wraps it
around the log to bring it in. He will go out there and
wrap it around the rock and let us bring in some of those
big rocks that are an impediment to their surfing. We have
indicated at least to that surfer who lives there, that we will help him, and I will say that again.

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

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

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

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

COMMISSIONER LYTTON: From the district's point of view, does that make the project not feasible? If you were limited to your own permit -- not the Machi permit, but your permit -- which said you can take all the rocks, but only above the mean high tide, could you do the project?
MR. ALDERSON: We don't believe there is a sufficiency of rocks. Now there is a sufficiency of rocks further up Dead Man's Gulch, which Mother Nature will continually bring down and will replenish that reef, because that's the way nature works. Even if some rocks are removed, it will just be a short span of years, and Mother Nature will have brought more rocks to that reef.

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

MR. ALDERSON: That is correct, sir.

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

(Thereupon a brief recess was taken.)

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

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

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

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

MR. GALATI: There is a letter from Assemblyman Bosco,
if I can find it.

MR. NORTHROP: It was addressed to us?

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

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

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

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

CHAIRPERSON CORY: He could move either way from that.

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

As far as the rock removal from above the high water mark and the alternatives, we feel these are fair alternatives to the proposal. If the State Lands Commission is going to consider rock removal below the high tide mark on the reef -- and this is where we get into the numbers of the 25 percent, large, small; everybody has opinions floating around. We're
saying we're willing to cooperate with the harbor district in performance of a study to look the situation over, but we can't guarantee numbers or volume, and we'd like to see the surfing site improved for enhancement. We're willing to abide by those results.

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

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

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

MR. ALDERSON: We have pictures of the reef.

COMMISSIONER LYTTON: We would like some assurances
in that area. If we could get something from the staff so we would understand the implications of the EIR process — if those two concerns of mine are solved, I'd like to vote in favor of the project.

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

COMMISSIONER BELL: I would second that motion.

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

MR. NORTHP: Okay.

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

COMMISSIONER LYTTON: I'd like to vote for the project.

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

CHAIRPERSON CORY: It would be the August meeting.

MR. NORTHP: Thank you.

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

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

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

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

    MR. SCOTT: How about July 17th?

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

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

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

    COMMISSIONER LYTTON: I concur with Mr. Bell.

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

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

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

    MR. TROUT: There are two assignments involved.

There's an assignment of the Coastal Commission permit from
Mr. Machi to the district, but the Commission is not acting on that. What the Commission is acting on is an assignment of the Lands Commission permit to Mr. Machi to the district.

COMMISSIONER BELL: I withdraw my comment.

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

MR. PRATTE: Yes, it is.

CHAIRPERSON CORY: Do we have any other items?

MR. NORTHRUP: Item 42, Mr. Chairman.

CHAIRPERSON CORY: Item 42.

MR. NORTHRUP: Modifying the land exchange with the National Park Service.

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

Without objection.

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

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

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

(Thereupon the public session of this...
meeting of the State Lands Commission
was adjourned at 12:15 p.m.
CERTIFICATE OF SHORTHAND REPORTER

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

That I am a disinterested person herein; that the foregoing State Lands Commission public hearing was reported in shorthand by me, Paul D. Ramshaw, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of July, 1979.

PAUL D. RAMSHAW
Certified Shorthand Reporter
License No. 3434