STATE LANDS COMMISSION

TRANSCRIPTS

OCTOBER 29, 1990

AND

DECEMBER 12, 1990
BEFORE THE STATE LANDS COMMISSION
OF THE
STATE OF CALIFORNIA

IN THE MATTER OF  )
MEETING OF THE  )
STATE LANDS COMMISSION  )
                        )
Public Hearing on  )
Agenda Items No. 34,  )
No. 36, and No. 40  )

TRANSCRIPT OF PROCEEDINGS

October 29, 1990

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BEFORE THE STATE LANDS COMMISSION

Los Angeles, California

October 29, 1990

-- PROCEEDINGS --

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

DEPUTY COMMISSIONER STANJELL: I move the minutes of the last meeting.

DEPUTY COMMISSIONER MANNING: Second.

CHAIR TUCKER: Okay, minutes are approved.

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

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

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

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

MR. WARREN: Mr. Chairman?

CHAIR TUCKER: Yes.

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

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

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

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

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

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

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

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

A settlement agreement was entered into by the State; Ticor Title Insurance Company, who was the original permittee of the groins; and about 75 percent of the homeowners along Las Tunas Beach.
One of the chief features of the court-approved settlement is allowing the homeowners to replace the groins with eight new groins, and these groins will provide for their homes protection from erosion by the ocean.

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

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

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

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

CHAIR TUCKER: Okay. Anything else?

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

CHAIR TUCKER: So the item that is up for consideration by the Commission is both the certification of
the EIR and the granting of the lease.

DEPUTY ATTORNEY GENERAL HAGER: Correct.

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

DEPUTY ATTORNEY GENERAL HAGER: Exactly.

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

(No response)

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

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

Why don't we start with Fay Singer then.

MS. SINGER: Hello there, good afternoon. My name is Fay Singer and I am a homeowner at Las Tunas Beach. The request for this permit arises, as you know, from a settlement agreement negotiated, approved, and desired by three parties; namely Ticor, the owner parties represented by Mr. Dummit, and the State Lands Commission, represented by the Attorney General's office.
Therefore, although the applicant of record is Mr. Dummit, in effect all three parties to the agreement are in fact the applicants. This indicates a clear and evident and major conflict of interest on the part of the State Lands Commission acting as both applicant and judge. I believe that significant questions of ethics and legality exist in your ruling on this permit.

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

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

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

The final EIR quotes Ken Jacobson, the Marine
Safety Chief, as indicating the city of Newport Beach only bans people from climbing on jetties during quote "dangerous ocean conditions." At that time they are closed by fencing and placing signs at the foot of each jetty. Who is to do this at Las Tunas Beach?

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

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

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

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

However, is the State really relieved of this
responsibility? The State Lands Commission has been fully advised of the potential dangers to the public caused by this groin project.

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

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

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

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

I'm a homeowner with a groin on and abutting my property, so in effect you are approving constructive condemnation of my property. Over 50 percent of our 30-100t wide lot will consist of a rubble mound groin instead of a sandy beach.

We do not need this rubble mound groin for protection of our home. We have been through two major storms
with no damage. We have a very good sea wall and an engineered foundation.

This project has been planned without not only our approval, but no consultation, advice, or knowledge. A group of homeowners in effect are deciding what they will do on our private property, a classic example of tyranny of the majority. I expect you as my elected representatives to protect my interests. If you don't, who will?

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

(No response)

CHAIR TUCKER: Thank you.

Kurt Simon.

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

CHAIR TUCKER: Yes. We represent the Commissioners.

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

CHAIR TUCKER: We're their deputies.

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

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

MR. SIMON: Well, something is wrong, because you
are the ones responsible for what I want to complain about, that I have a complaint about.

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

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

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

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

Instead of vigorously prosecuting the guilty insurance giant, the State Lands Commission and their attorneys, in collusion with the defendant Ticor, dragged over 82 of them in -- all of the nearby houses into court. People
who had nothing to do with Ticor's misdeeds.

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

Disgusted, I complained so vigorously that I was finally dismissed from this case, but not before my liability insurance had to pay for the defense of me alone over a quarter of a million dollars in legal fees. And it isn't over yet. I am still involved in about 60 cross-complaints.

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

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

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

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

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

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

CHAIR TUCKER: Okay, thank you.

Arnold Graham?

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

I would request that this Commission not view this particular matter in a vacuum, that is, it's related more than just to a simple EIR. The background and history you have some familiarity with, but it involves the State's desire to want to
remove some groins, some shrapnel like protrusions existing on
the beach at the present time.

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

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

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

We don't know the quantity of fill or other
artificial materials that will be required for this particular
project, nor do we know the methodology that will be used in
implementing or installing those. We don't know the
consequences of probable erosion or accretion, both at the site
or upcoast or downcoast.
That has not been adequately analyzed. There is no data base to allow you to make an informed decision on this application because of the absence of data.

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

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

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

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

The noise factor has not been addressed. The dust factor has not been adequately addressed. The simple nuisance issue has not been addressed. Clearly there is going to be -- if this is to go ahead, there is going to be a situation of changed conditions. But we don't know, no one knows, you don't
know. I don't know, the environmental assessors do not know what the changed conditions will be because they have not adequately addressed them in the draft of the report that has been presented.

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

'Thank you.

CHAIR TUCKER: Thank you.

Nate Stock?

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

CHAIR TUCKER: Thank you.

Pepi Kelman?

MS. KELMAN: I'm a homeowner on Las Tunas Beach,
and I just wanted to address some of the good points that were made here today.

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

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

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

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

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

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

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

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

We are fighting with each other when really I think instead of rehashing the issues that have been rehashed and remashed for the last I don't know how many years already,
and I might add that Kurt has not lived in his home on the
beach. I have lived in my home for 20 years, and I think that
all the people who do live there now, can't they see this is
just taking us backwards as to pointing the fingers at whose
fault it is. I am more concerned about how we can go forward.

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

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

MS. KELMAN: Correct.

CHAIR TUCKER: -- but additional --

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

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

DEPUTY ATTORNEY GENERAL HAGER: That is correct,
yes.

MS. KELMAN: Thank you.

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

Jeff Hudson?

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

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

The commenting parties raised many serious issues, but the responses in the finalizing addendum treated them as trivialities. It dismisses the 30 comments based on responses averaging three to four lines each. Most of the responses simply miss or refuse to confront the point.

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

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

Without substantiation the project report then
claims, and I'm quoting: "The proposed project is designed to reduce visual impacts to the degree feasible, and still provide required shoreline protection. Reducing the height and/or the length of the groins will reduce this visual impact resulting from the presence of the rock areas; however, groins of reduced size would not effectively provide erosion protection for adjacent homes or to the Pacific Coast Highway.

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

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

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

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

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

I emphasize that the State's own position is that the groin system is unnecessary to protect the beach. There is no scientific consensus on the project and the report offers no analysis to reconcile the differences between the experts. With scientific uncertainty and no clear benefits, approval of the project or a finding of overriding considerations cannot be supported.
A Statement of Overriding Considerations requires the finding that the benefits of the project outweigh the unavoidable adverse environmental effects. The benefits have only been vaguely described as home protection and a wider beach, but no specifics are given. The material distributed today adds removal of the groins as a benefit, but surely there are less obtrusive ways to do that.

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

Other adverse effects such as surfgrass loss and potential downcoast erosion have uncertain magnitude, and the report says they will be mitigated by imposing on the homeowners whatever cost results. The vague and uncertain benefits of the project are offset by very real costs. The proponents seek to appropriate supervision of costs, and unlimited liability exposure on homeowners. The mitigation
measures would add unlimited liability exposure from certain upcoast and downcoast erosion. The report is wrong in stating that these costs are irrelevant.

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

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

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

The report effectively ignores the costs and liabilities. There is no basis on which to conclude that the benefits, which are unspecified and drawn into question by the report and disputed by the State itself, outweigh the visual impact and the adverse effects.
I've had a chance to briefly look at the Statement of Considerations -- or Overriding Considerations handed out a few minutes ago. It offers no meaningful analysis of risks and benefits. Indeed it dismisses several alternatives for eliminating impacts because they are infeasible. Why are they infeasible? Not because they won't work, not because they are technically unsound, not because they cause other problems, instead it's because they aren't feasible because they do not meet the terms of the settlement agreement which calls for eight groins.

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

Thank you.

CHAIR TUCKER: Okay, thank you.

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

MR. CICOTTE: Cicotte.

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

MR. CICOTTE. My name is Lynn Cicotte. I represent Dorothy and Robert Colbert, homeowners, 20-year members on the beach. Obviously you've been in contact with Robert Colbert, he's been quite active in this thing.
The problem with the report that you're receiving is that it's unbalanced. In other words what you've got is essentially a one-sided story. The way this -- to appreciate this, what you have to understand is that once the State and Ticcr smelled that they could get some kind of a settlement of this deal, what happened was that the courts then caused a closure basically of information to those parties, those homeowners who did not go along with the deal.

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

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

The point is here, this beach is not something that's new to the area. This beach has been here for quite a while. The State of California has looked at it for quite a
while. The Corps of Engineers has looked at it. The point is all the decisives should have been considered when putting it into this report. There have been independent engineers who have looked at this. They have basically the background and the knowledge to realize what would happen here to the beach, the sand.

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

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

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

Has the report addressed whether they will be able to keep that sand? Has the report addressed whether down beach there's going to be any sand? They talk about to get groins
and get sand to put around them. What sand? We don't have it anymore. That's something we have to appreciate in this world where that is a very rare commodity.

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

Thank you.

CHAIR TUCKER: Thank you. Craig Dummit.

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

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

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

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

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

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

In those lawsuits the State has always been a
party, Ticor has always been a party, and the homeowner or
homeowners in front of groins where the public was injured have
always been a party. So there is existing liability even
though some of the homeowners may not fully appreciate that, in
the condition of the groins as they currently exist which would be removed.

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

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

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

So there has been an opportunity to submit both written and oral comments and to raise any issue which could or should be raised, and after spending over a quarter of a million dollars in expert consulting fees and engineering fees
to come up with the environmental document we have, I would find it surprising and shocking if any issue, regardless of how remote, was not brought up by the opponents or otherwise brought up during the environmental process.

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

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

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

The major difference will be instead of replacing the steel with steel, the steel will be replaced with rock, but will go out about the same distance into the ocean and be about the same height within a few feet of what was there 60 years ago and what the community has lived with for 60 years and accepted for 60 years.
Let me just say that if that is still an uncertain item, we do have renderings of the profiles of the steel groins, the profiles of the rubble mound groins, and to sum it up it is essentially the same size structure, it's just made of different material.

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

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

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

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

DEPUTY COMMISSIONER STANCELL: Just replacing what's there?

MR. DUMMIT: Yeah. It is not only to replace what's there in regard to height and length, but hopefully to
put them in at the same place. The present plans have them in
the same place as the existing groins; one good reason being
that they turned out to be in the engineeringly correct
locations.

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

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

MR. DUMMIT: Pardon me?

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

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

Some people I understand thought that these groins
would extend 20 feet above the sand for example, and it's to
show that given the amount of the groin that is under the sand,
as is the present groin, how much of it will be sticking out
above the sand and water compared to how much is now with the
steel, and it's essentially within a foot or two of the same
DEPUTY ATTORNEY GENERAL HAGER: May I just make one clarifying point. I don't want any misconception here. The fact that the groins have deteriorated substantially over the years, there's not that much left of them, so what you're replacing -- if you compare what you have today with what you're going to replace, you're going to have something far more intrusive than what you have today, because it's been deteriorating.

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

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

DEPUTY COMMISSIONER FANCELL: Well, 60 years ago they had groins in there.

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

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

CHAIR TUCKER: One other point. As I understand it, the proposed lease has provisions in it that would allow
the location of the groins within 60 feet of the existing groins?

MR. DUMMIT: That is correct.

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

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

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

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

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

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

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

John Crutchfield?

MR. CRUTCHFIELD: Good afternoon, gentlemen. My
name is John Crutchfield. I'm here on behalf of Mr. and Mrs. Harrow, Ms. Homer, and Mr. Taves, all of whom are homeowners in the Las Tunas district.

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

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

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

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

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

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

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

Even a cursory review after a review of the Final
Environmental Impact Report will reveal at least 8 of the 13
should have been checked "yes" or "maybe", and have been borne
out as such by the final Environmental Impact Report.

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

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

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

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

So I respectfully submit it's not a very difficult
weighing process to do. You have concrete negative effects and
questionable at best positive effects to balance, and in view
of the vociferous objections made here by many of the
homeowners, I respectfully request that you deny the
application for the State lease.

Thank you very much.

CHAIR TUCKER: Thank you.

Carolyn Van Horn?

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

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

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

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

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

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

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

Whenever there is any repairing, resurfacing, that's additional delay. And I really caution you -- I
remember seeing a necessary closing of a lane, there was only one lane open from near the Civic Center, from Pepperdine down to Webb Way, and it was during the middle of the day and it was only to resurface. There was an ambulance at the top of the hill. It could not get through. And we really don't need that. We only have one way in and out on PCH.

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

Thanks.

DEPUTY COMMISSIONER STANCELL: May I ask you a question?

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

MS. VAN HORN: Yes, it was.

DEPUTY COMMISSIONER STANCELL: Where did they tell you that?

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

DEPUTY COMMISSIONER STANCELL: That was when, this year?

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

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

DEPUTY COMMISSIONER STANCELL: Thank you.

CHAIR TUCKER: Geary Steffen?

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

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

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

The lawyer fees, the attorney fees so far have been probably $8 or $10 million dollars, and the three suits combined were less than $50,000 -- I think $20-some-odd thousand dollars were actually settled. So we're talking about over a period of all the years of Malibu, say 50, 70, 80 years,
we're talking about $24,000. That $24,000 cost millions in attorneys' fees and puts us where we are today.

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

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

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

Sand. They say that the sand dumped in there will last, and I think some of it will. I think that knowing that the sand moves in and out is important to you folks. In a three-hour storm we've lost as many as four or five feet of sand. Now we haven't lost that sand, that sand has been taken
out by the storm and deposited wherever, and it may come back three weeks later or three months later or whenever.

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

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

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

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

CHAIR TUCKER: Thank you.

W. F. Keller?

MR. KELLER: Good afternoon. I'm Will Keller and I'm here to speak as an individual resident of Malibu and to provide you with some factual information regarding the traffic
considerations, and in no way to comment on the merits of the project. I wrote a letter which apparently did not arrive in time for consideration in preparation of the final EIR, and I'd like to excerpt some of it for you.

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

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

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

And the EIR mentions it on page 122 and then indicates that it was for safety reasons. It really wasn't. I've been a resident for 30 years and we lobbied for many years
on the basis of safety and got nowhere. And it was not until
the big rock slides which occurred, and they then discovered
that the vibration from those trucks was contributing to
slides, also to damage to the homes along the way.

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

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

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

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

Truck activity was only being restricted from 7:00
to 8:00 a.m. and 4:00 to 5:00 p.m. I think this is totally
unacceptable. Sand flats which could have been readily routed from the east -- I believe they were coming from Hansen Dam, so they could have come over the freeway, Highway 10 down to the Pacific Coast Highway in Santa Monica, in that direction, were intentionally being routed in the other direction so that they would drive the whole length of Malibu.

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

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

Have you any questions?

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

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

CHAIR TUCKER: Okay, so there's still a step that
will have to be gone through in terms of a determination by Caltrans that this activity would be safe and consistent with all the standards that they would apply.

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

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

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

CHAIR TUCKER: So you think they are insufficient?

MR. KELLER: Yeah.

CHAIR TUCKER: Thank you.

Okay, I have received slims from four people who indicated that they would like to speak if needed, and those are Jackie Carr, Kelly Wimberly, Steve Spina and James Irsfeld. I assume these are all people who would be supporting the certifying of the EIR and the granting of the lease.
If any of you would like to speak now, come on up.

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

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

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

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

I walk on the beach every day. I will not be able to do this because I will not be able to go on someone's private property, under their house to get around the groin,
to go 200-or-some-odd yards out into the water to get around
the groin. So I will not be able to walk, something that I do
daily.

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

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

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

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

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

CHAIR TUCKER: Yes.

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

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

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

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

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

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

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

That is all I have to say.

CHAIR TUCKER: Thank you.

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

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

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

Now I bought my house down there about 20 years ago, and at that time you could walk from my place clear up to
the Moonshadows, which is a couple miles further up the coast, at low tide. Now you're lucky if you can walk a hundred yards in either direction. To say that the beach is not eroding is absolutely ridiculous to anybody who lives there and who has seen the place.

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

Thank you.

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

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

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

MS. WIMBERLY: Yes, that's correct.
CHAIR TUCKER: Those are the two decisions made today.

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

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

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

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

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

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

MS. WIMBERLY: Well, actually you haven't, I'm sorry. If you're making a decision, then my question is, Has this been read by each of you?
CHAIR TUCKER: That's the answer that you'll have to take.

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

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

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

CHAIR TUCKER: No, that is not correct.

DEPUTY COMMISSIONER MANNING: No, that's not true.

Let me --

CHAIR TUCKER: All of the Commission members have looked independently at the information involved here, and I am
sure the decision of each of the Commissioners is based upon an
independent review of all of this information. So the idea
that it's the staff that's making the decision is incorrect.
That is not the case.

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

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

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

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

Because if you have read the draft or the final
you know that most of the questions that were raised in the
public meeting about the draft were not answered, and that
there are so many inconsistencies and inaccuracies in both the
draft and the final EIR and the reports that Mr. Dummit has
given, that it would take days to address them all, as it took
days and days to read all of this information.

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

Thank you.

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

Okay, Mr. Hudson.

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

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

(Audience responds, negatively)

MR. HUDSON: Has anyone ever seen a groin that is
Audience responds, negatively)

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

(Audience responds, negatively)

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

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

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

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

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

Why do we have to do that? Certainly the scientists don't agree. The safety has been glossed over, and it's suggested that there's no record of any reports. Why do
we have to set up a groin system like this? And in fact even
those other groin systems such as the wedge in Newport, I look
at that and I think it's notorious for being very dangerous.
This is going to have very unpredictable impacts
and it's a very serious decision. And I know that the
Commissioners want to respond to the danger of the existing
groins and want to come up with a solution to have those groins
removed, but that should not compel the Commission to make an
improper judgment on this Environmental Impact Report.

Thank you again.

CHAIR TUCKER: Thank you.

Fay Singer?

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

Now admittedly right now the sand level is down
and our groins are showing. We are a property owner since
1976. The last two to three years are the first times that we have seen the groin that was on our property. When we bought our groin there was at least ten feet of sand covering that groin. There was no danger to the public -- I forgot the point I was going to make.

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

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

Now I don't believe the other consideration -- liability. I don't believe that a groin 8 to 10 feet wide at the base and 12 feet high is a lesser potential for injury than a 6-inch-wide groin, and when they show -- very visible, I think that rubble mound groins present a lot greater liability than what exists now.
At the moment it is possible that you can get a puncture wound in your foot if you don't see the groin if the sand level is very high. At the moment they show so there is not this potential. A rubble mound groin can cause, if I may remind you, drownings. In Galveston there are many. I'd rather have a puncture wound in my foot than be drowned, I mean, I don't know about you.

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

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

CHAIR TUCKER: Alan?

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

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

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

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

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

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

Yes, ma'am.

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

I also wonder why we're arguing about liability
when this could have been solved very easily. Why, if the
State wanted to get rid of the liability, with private homeowners why don't they just cut and cover them and then nobody would have to worry?

CHAIR TUCKER: Anybody else have anything?

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

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

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

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

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

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

DEPUTY COMMISSIONER MANNING: I move the
recommendation.

CHAIR TUCKER: Mr. Manning moves.

DEPUTY COMMISSIONER STANCELL: Second.

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

Okay, Item 36

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

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

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

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

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

CHAIR TUCKER: And that Stirs concurs?

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

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

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

DEPUTY COMMISSIONER MANNING: I move the item.

UTILITY COMMISSIONER STANCELL: Second.

CHAIR TUCKER: Item is approved.

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

I'd like to return just briefly to these dredging
issues, and I have had a chance to talk to Mr. Manning and to
Mr. Stancel!, and it's our -- the feeling of all three
Commissioners is that any time that the Commission and
Commission staff is going to change fees in any way, that we
need to be notified.

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

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

Okay, anything else?

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

CHAIR TUCKER: I didn't see that.

MR. HIGHT: Is authorization for litigation to

eject a trespasser at Lake Tahoe. The individual has been
notified over 30 times of his necessity to come under lease.

He has refused, and we seek the authorization for the ejection.

CHAIR TUCKER: Okay, and he is not a disabled

Vietnam veteran?

DEPUTY COMMISSIONER MANNING: Move the item.
DEPUTY COMMISSIONER STANCELL: Second.

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

(Whereupon the proceedings concluded.)

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CERTIFICATION

STATE OF CALIFORNIA

COUNTY OF VENTURA

I, Laura Gullette, hereby certify that the foregoing pages 1 through 66, inclusive, are a true and correct verbatim transcript of the proceedings as reported by me.

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

[Signature]
LAURA GULLETTE