MEETING BEFORE THE
STATE LANDS COMMISSION
STATE OF CALIFORNIA

1 WORLD WAY
BOARD OF AIRPORT COMMISSIONERS MEETING ROOM
DEPARTMENT OF AIRPORTS ADMINISTRATION BUILDING
LOS ANGELES, CALIFORNIA

FRIDAY, NOVEMBER 7, 1997
10:20 A.M.

REPORTED BY:
Marcy Knobel,
CSR No. 11234, RPR
Our File No. 40459
MEMBERS PRESENT

Gray Davis, Lieutenant Governor, Chairman
Kathleen Connell, Ph.D., State Controller
Chris Waddell, Commissioner, Department of Finance

STAFF PRESENT

Robert Hight, Esq.
Executive Officer

Jack Rump, Esq.
Chief Counsel

Michael Valentine, Esq.
Senior Counsel

Sharon Shaw
Administrative Assistant II

ALSO PRESENT

Dennis M. Eagan
Deputy Attorney General
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CONTROLLER CONNELL: I apologize for being a little late this morning. The Lieutenant Governor is on his way, and we are going to get started. I'm going to serve as the chair this morning until the Lieutenant Governor gets here.

And I'd like to call the meeting to order. Can we take the roll, please.

MS. SHAW: Controller Connell?

CONTROLLER CONNELL: Present.

MS. SHAW: Commissioner Waddell?

COMMISSIONER WADDELL: Present.

MS. SHAW: Lieutenant Governor Representative Patterson?

REPRESENTATIVE PATTERSON: Present.

CONTROLLER CONNELL: Fine. Let us go to the consent calendar. And why is it so quiet?

There you are, Bob. Bob, would you like to guide us through the consent calendar this morning?

MR. HIGHT: Yes, Madam Chairman. Items No. 1 through No. 68 are on the consent calendar.

Staff knows of no opposition, no problem. All of these have been diligently worked on, and we believe that they can be taken up in one item. So we would request that motion.

BARNEY, UNGERMANN & ASSOCIATES 1-888-326-5900
CONTROLLER CONNELL: Do I have a motion to approve the consent calendar?

COMMISSIONER WADDELL: I'll move the consent calendar.

CONTROLLER CONNELL: Seconded. It is a unanimous vote on the consent calendar. We have completed the consent calendar.

And we will now move onto the regular calendar.

And, Mr. Hight, would you like to begin?

MR. HIGHT: Yes, if we could approve the minutes --

CONTROLLER CONNELL: Oh, I'm sorry. I thought we had. We have not approved the minutes? I'm sorry. I have a motion to approve the minutes from last --

COMMISSIONER WADDELL: Approve the minutes.

CONTROLLER CONNELL: Okay. Thank you. They've been moved and approved by unanimous vote.

MR. HIGHT: Okay.

CONTROLLER CONNELL: Mr. Hight.

MR. HIGHT: Item 69, Madam Chairman and Commission Members, is the request by Mobil Oil Corporation for the removal of a pier known in various
contacts as the oil piers or the Mobil Pier or the Ferguson Pier.

In your packet before you, in the blue folder, are letters of support and opposition. There are 47 letters of support. And it's interesting to note that technology has reached us. About half of them are via E-Mail. We have 2 letters in opposition.

In addition, before you are three sets of packets of photographs marked Photo Group 1, 2, and 3. And as we proceed through the discussion, we will refer to them.

At this point, I'd like to have Mike Valentine, who is senior counsel with the Commission, present the details of this item.

CONTROLLER CONNELL: Thank you.

Mr. Valentine.

MR. VALENTINE: Thank you. The decision matter before the Commission today is the approval or disapproval of a decommissioning plan, that is --

CONTROLLER CONNELL: Could you speak into your microphone so that the others in the room could hear.

MR. VALENTINE: Is this better?

CONTROLLER CONNELL: Yes.

Can everyone hear him? I see people
straining. Is everyone able to hear Mr. Valentine? If you can't hear -- is there an audio technician in the room? Can we increase the -- in fact, all the microphones seem a little low today. Maybe we can increase the volume.

MR. VALENTINE: Let's try this again. Is that --

CONTROLLER CONNELL: Are you still having difficulty in the back of the room?

They are still having difficulty. Maybe you can just yell.

MR. VALENTINE: Okay.

CONTROLLER CONNELL: We have E-Mail, but we have no microphones. What can I tell you?

MR. VALENTINE: I'll speak up. The decision matter before the Commission today is the action on a decommissioning plan, that is, a plan for the --

CONTROLLER CONNELL: Commissioner Valentine, may I interrupt you? The Lieutenant Governor has arrived.

Gray, I'm happy to see the chair of this commission. We just went through the consent items, and we just approved the minutes, Gray. And we are now just beginning our discussion of the item that is
before the Commission today, the Mobil Oil request for removal.

CHAIRMAN DAVIS: Thank you. Was I recorded aye on the consent calendar, or do I --

CONTROLLER CONNELL: Yes, you've been recorded.

CHAIRMAN DAVIS: If there's no objection, please so record me.

CONTROLLER CONNELL: Yes.

MR. VALENTINE: Thank you. The matter before the Commission today is acting on a decommissioning plan, that is, a plan for the removal of an old oil pier at the beach in Ventura County and for the restoration of that beach.

The piers were built in the '30s under state-leased provisions requiring their removal at the end of their useful life. Their useful life, their economic life for the production of oil, ended in 1993. And, therefore, staff is recommending approval of the decommissioning plan to demolish the piers and remove them from their current site.

The site is located approximately nine miles north of the city of Ventura just south of the Ventura-Santa Barbara county line.

The policy reasons which we believe
support removal of the pier is in no particular order: one, their advanced age. They were constructed in the '30s as I mentioned. Two, the public health and safety aspects of leaving old and noneconomic oil piers in their place is not good.

We believe that, given their current condition, their age, and the cost of maintenance, that it will not be too many winters and maybe not too many weeks before significant portions of these piers are removed by the ocean itself.

Therefore, we believe that it would be more prudent, in both the public safety sense and an economic sense, to remove them as part of the plan.

We are informed that annual maintenance costs on these piers is approximately a floor of $250,000 per year and up from there if the piers were to be left in place. Obviously, Mobil is trying to get out from under that cost, and somebody else would have to assume it not to mention the liability concerns that go along with these piers and the management responsibilities.

Finally, and perhaps more -- most important, we believe that the public benefits associated with beach restoration and demolition of these piers and the increase in access in use of the
beach greatly outweighs any good that these piers currently do for the public.

So for all those reasons, we are recommending their removal. And there have been some environmental issues raised in connection with the demolition or proposed demolition of these piers. And if I may briefly discuss three of those, I'll keep it short.

It has been mentioned that the -- there are air quality impacts associated with the equipment which will do the demolition; that is, they have exhaust, they create emissions.

Even though these emissions are exempt under the County Air Pollution Control District's guidelines, Mobil has voluntarily put together a package of offsets, which are means of purchasing credits that would, in effect, be -- account for these emissions. Mobil agrees that this offset package can be made a condition of your approval today, if you do so approve.

Second, there will be temporary impacts, at the very least, on public access because parts of the beach will have to be closed. Mobil has agreed with staff on a comprehensive, we believe, public access package to open up to access areas most in the
north and south of the beach that have been not
physically used in the past due to physical constraints
on their use.

And the company also has agreed that the
access road, which is also on a state lease and would
have to be removed at the end of the term, will be
improved. And they will offer it to a public agency
for management as part of the public park at this site.
And they believe that the County will be willing to
accept that although no final decision has been made in
that regard.

Finally, there have been allegedly
impacts on the quality of the surf, whether or not the
frequency, duration, and quality of ridable waves will
be affected by the removal of the piers.

Staff is of the opinion that there is no
demonstrated impact on the surf as a result of removal
of these piers and that the surf conditions were
created by other natural and artificial factors,
including the large amount of fill, which you can see
on the photographs here (indicating), especially the
two black-and-white middle ones, which occurred when
Caltrans expanded or built Highway 101 in its currently
location. That occurred in 1971.

My estimate is that there's about 500
feet of new fill, which those figures demonstrate, maybe 300 to 500 depending on where you're looking at, but a lot of new fill out into the ocean at that time.

While there has been substantial opinion expressed on this issue, we do not believe that there is substantial evidence to justify any mitigation measures for the alleged loss of surf.

In addition, and probably more importantly, if surfing is considered as merely another component of beach recreational use, the net result on beach recreation and beach access as a result of the removal of this pier will be positive. There will not be a uniform loss in beach use. In fact, there will be a plus for beach users, and we don't believe there will be an impact on surfers. But even if there were, there would still be a plus.

CHAIRMAN DAVIS: "Plus" in the sense that there are other benefits to the public that outweigh the inconvenience to the surfers, or "plus" in terms of the enjoyment of the surfers?

MR. VALENTINE: No, improve these unprepared vistas of the Channel Islands, improved access to the beach, improved use of the shore --

CONTROLLER CONNELL: For other classes of use?
CHAIRMAN DAVIS: Other classes of use, yeah.

MR. VALENTINE: Of beach uses. We would not want to balance beach use against financial benefits or surf against finances and just saying that it's a good project, and, therefore, we don't have to do anything about the quality of the surf deteriorating.

But we do think it's fair to say, when you're looking at recreational uses, one recreational user doesn't have a trump, whether it's a beach volleyball group or a surfing group, over other beach uses. And if the net impact on beach recreation and beach use is positive, then there's no big issue measure that's required even if, as I say, there were an impact on the surf, which we don't believe that there is.

Therefore, we recommend that the Commission approve the decommissioning plan as submitted and that the Commission, in accordance with that, adopt the mitigated neg dec that has been prepared, the negative declaration which has been prepared, under staff direction.

And we would ask that the conditions that
I have alluded to be made part of that permit, including an air offset package as is described or outlined in the Mitigation Monitoring Plan attached to the calendar item. The beach access improvement package that I -- and the beach improvement package that I mentioned.

I will and other members of the staff are, of course, here to answer questions as is Mobil's representatives. And in addition, the consultant who -- the staff's consultant who prepared the -- the mitigated declaration is here as is the engineer who did -- the coastal engineer who did the coastal study to determine whether or not there would be impacts on the surf.

That study, incidentally, cost $40,000. It was not a slapdash effort in order to determine whether or not removal of the pier would impact the surf. The conclusion was that it would not impact the surf.

And I'd be happy to respond to questions, or you can ask Mobil to step forward for their presentation.

CONTROLLER CONNELL: Mr. Chair, I think it would be helpful, before we have any public response, to hear from the consultant who did this...
study, $40,000 study, because, as I read at least, the
concerns that were evidenced in the communication for
Patagonia to the Commission -- they seemed to be
arguing about the quality of the surf there and whether
the quality of the surf is going to be in any way
negatively impacted. And I would like to hear the
results of the consultant's study.

Is the consultant available?

MR. HIGHT: Yes.

CHAIRMAN DAVIS: We can do it -- we'll
call the consultant first, and then we'll call Mobil.
And then we'll call the people who have asked to be
heard on this issue.

MR. VALENTINE: Jon Moore is the
professional coastal engineer who is the principal in
Noble Consultants.

CHAIRMAN DAVIS: If you could just state
your credentials and the methodology you used to come
to the determination you did relative to the impact on
surfing.

CONTROLLER CONNELL: Are you a surfer, by
the way?

MR. MOORE: I am a bodysurfer. And let
me, if I may, Mr. Chairman and Members of the
Commission, my name is Jon Moore. I am a coastal
engineer having practiced for over 25 years in California, educated at the University of California Berkeley in coastal engineering.

My personal background -- as I spent all my life on the ocean, both the east coast, gulf coast, and the west coast. So I believe my credentials are the sum total of my educational background, my professional practice, and my personal interests, and my recreational interests in the ocean, who I'm now trying to pass onto my children.

CHAIRMAN DAVIS: And who -- would you just mention any other clients or entities for whom you've consulted.

MR. MOORE: Yes, sir. My clients have included the U.S. Army Corps of Engineers. We have been, for the past eight years now, the contractor to the Los Angeles District to perform coastal engineering studies. We were the consultant responsible for the coastal shoreline master plan for Santa Barbara and Ventura County for the joint powers authority known as Beacon.

We have performed coastal analyses and design for the U.S. Navy; various municipalities; cities of Oxnard, Ventura; county of Ventura; and so on; and as well as many private entities. So our
experience -- my personal experience runs the whole gamut from design, planning, environmental impact analysis, and the like. If you'd like, I can very briefly go into the methodology or the analysis that we did.

CHAIRMAN DAVIS: I want to know if you surfed in these waters. Have you surfed in the waters that allegedly would be affected by the removal of the pier?

MR. MOORE: Every year I go camping at El Capitan State Beach. We surf there. I bodysurf there. I swim there. I am not a board surfer. I am a boogie-boarder, so to speak.

Working with me on this particular study was Rea Strange, who is a local Santa Barbara marine meteorologist who's been practicing in this area for over 40 years. His background includes wave hind-casting. He's well known to the surfing community for his local knowledge and familiarity with surf, surfing, wave conditions, and how waves break and so forth on the coastal zone.

So it is a collaborative effort, if you will, between the technical physics, the hydrodynamics, the coastal processes of the site, the wave physics, which is very unique to Santa Barbara Channel, which
Mr. Strange is well recognized for. And that forms
the -- well, was drawn upon heavily.

CONTROLLER CONNELL: Can you explain to
us when you did your study because I read the material
from Patagonia. There appears to be a concern about
the condition of the waves following the removal of the
pier.

Now, as I understand, our counter to
that, the Lands Commission staff, and your counter to
that is that Caltrans has already deposited sand along
the beach and that that sand is permanent, that it will
stay, and that that sand indeed creates some of the
wave motion at this point in the beach.

Is that the discussion that we are
having, whether or not the waves are going to be
permanently altered as a result of removal of the pier?

MR. MOORE: Yes. The issue that is
before you and that has been in discussion is whether
or not the piers themselves are responsible for wave
quality being better for surfers and if, in fact, the
piers, by their removal, would result in the waves
being lowered or being diminished in quality to the
point where, in the surfers' opinion, the site no
longer would have the value that they are indicating
that it has.
CONTROLLER CONNELL: How would you rate this portion of the beach? I mean, is this like a budding slope, or is this an intermediate, a double diamond? I mean, I'm a skier, not a surfer. I mean, how do you gauge the quality of the surfing at this point versus -- is it Rincon that part of the beach further up the coast which the surfers generally like?

MR. MOORE: Yes. One of the -- if you look in the surfer literature or the -- such as many of the guide books that are published, for instance, that indicate where the better surf spots are -- one of the first and foremost and one of the most premier spots is, in fact, Rincon Point, which is to the west of this site, and that is an excellent spot.

CONTROLLER CONNELL: And that won't be disturbed or perturbed by what we are doing here?

MR. MOORE: No. The action with the oil piers will in no way whatsoever impact any site up coast or down coast and the -- in our opinion.

And the -- and the oil pier site itself, in our opinion, as stated in the report, it is of a -- when ranked above other point break sites or beach break sites, is not one of the better sites in Southern California.

It's primarily -- where it is
distinguished among other spots in Southern California is the fact that it is known as a wind swell site. And by that, I mean that the prevailing winds, which generally occur in the outer waters of Santa Barbara Channel and offshore Pt. Concepcion, create the waves day in and day out in Santa Barbara Channel.

When other spots are not necessarily available for surfing, this spot has a wave, not necessarily a good wave. It has a wave. It can be surfed. And, therefore, when other sites are not available, this site can be available.

On the other hand, when other sites are available, it's our opinion that those sites are far preferable and have a greater quality than this particular site because of the length of ride, the shape of the wave, the other factors.

CONTROLLER CONNELL: Now, once we remove the pier, what kind of wave activity will occur on this beach?

MR. MOORE: In our view, the wave conditions at this site are not governed by the piers. They are governed by the coastal dynamics. They are governed by what Mother Nature will do to the shifting sands. Sand moves inshore. It moves offshore. It is constantly moving down coast. We have stormy winters.
We have calm winters. And it's well known that beaches do change.

One cannot say with certainty what this site will do in the future because one doesn't know that. However, we can state, based upon our studies, that we don't think that the piers are an integral part of that.

In other words, the piers, whether they are there or whether they are not there, there's other far more overriding physical processes going on in terms of how the sands will be moving in response to future storms, in response to subsequent episodes of rainfall, which brings sand to the beach.

All of that goes to determine whether or not a bar will be present, whether a bar will not be present, whether one year will be more favorable for surfing at that spot, or whether, because of the physics, there may not be very good waves at that spot. So there is no guarantee in our view.

And the piers are not connected to that guarantee issue. It's a natural phenomenon in our view.

CONTROLLER CONNELL: What would happen if the pier was just allowed shearing? Sink eventually into the ocean? I know we have liability problems connected with that. But what would happen to the surf
conditions if that was to occur?

MR. MOORE: I think by what you see today is what you'll see in the future. If the debris were to fall in, you'll have some -- certainly some localized effect of the debris depending on how the debris piles. Or if it all collapses in one large heap, then you may have a break at that -- at that point.

But by and large, the -- I think it's safe to say that what you see now is what you would see regardless of whether the pier was there, removed, so on.

CONTROLLER CONNELL: So your argument is that the surf condition exists independent of the location of the pier?

MR. MOORE: Yes, ma'am.

CHAIRMAN DAVIS: I just have a couple of questions. What condition is the pier in now? And is it safe for people to walk out on there? What uses is the pier put to now?

MR. MOORE: Well, there may be other people here present in the audience, sir, who can best answer that than myself. But let me just say, from my limited observation of the structure itself, that it's in very poor condition and that I don't -- I don't
believe that -- and given the potential for this El Nino winter, which is upon us and has been well publicized -- but that notwithstanding, I don't think that that structure has much remaining life to it.

And I would expect an accelerated deterioration damage, possibly collapse. I think that there's evidence in what happened in 1983 when those piers suffered some -- you know, some very significant damages.

CHAIRMAN DAVIS: Thank you very much.

MR. MOORE: Yes, sir.

CHAIRMAN DAVIS: Do we now hear from the representative of Mobil?

MR. HIGHT: Yes.

MR. BROOKS: My name is Gary Brooks, and I'm the project manager for Mobil, representing Mobil and Windsor Energy. Mr. Ron Clark is up here. I really don't have much more to add. Noble is the consultant -- is, I believe, on a short list of consultants that's approved by the State Lands Commission.

And all we know is we had to examine this issue as part of the permitting process. They were hired. That's their report. And I really don't have any more to add.
I will say, from a personal standpoint,
we are here trying to do everything we can to mitigate
and control things that we can control. And based on
his testimony, we cannot control the surf or the ocean.
The ocean is going to do what it wants to do.

Mr. Strange here tells me -- Rea Strange, the local meteorologist, tells me that the cycles in
this channel run 40 to 50 years. We are trying to
examine a tiny, tiny wave that's just impossible to do.

So, Rea, would you like to say anything?

MR. STRANGE: May I?

MR. BROOKS: Okay.

CHAIRMAN DAVIS: I want to ask a question
or two of Mr. Brooks.

MR. BROOKS: Go ahead.

CHAIRMAN DAVIS: Can I ask it now? And
then we can -- if no one else has any other questions
of you, then you can go back to your seat.

What, if any, concessions or settlement
discussions did you have with Patagonia or any of the
surfers who oppose this action?

MR. BROOKS: We discussed probably two or
three topics with them. One of their major concerns
was beach access. And I think, if you look at our
plan, we have done a lot of work to make sure that the
beach is closed a minimal amount of time as possible.

We are going to try to give immediate
opening to the -- open up a Caltrans entrance on the
north side. We are also going to give immediate access
on the south side. We had rescheduled our work to get
the Short Pier out of there as quick as possible and
open that beach up as soon as possible. And we think
we have done everything there.

With regards to mitigation of the surf, I
believe I told Patagonia -- my strong belief is, just
from reading what's going on out here, the mitigation
of the surf and what we are trying to do all leads
towards an artificial reef, which is a controversial
issue in the surfing community.

And Mobil would rather not get in between
those different parties in the surfing community much
less getting in between the surfers, the wave riders,
the beach-goers. We don't want to get involved in that
situation.

So that's -- that -- those issues on the
surf mitigation -- once we remove the pier, we would
support anything you all would want to do on your
business of getting your artificial reef, but we would
rather not have any part of that. That's not our
business.
CHAIRMAN DAVIS: Wasn't there also an offer made to turn over the money --

MR. BROOKS: Yes.

CHAIRMAN DAVIS: -- that you would spend otherwise to remove the pier?

MR. BROOKS: Well, we would give the pier or turn it over as long as somebody would accept liabilities for it. And we have not received any takes on that.

CHAIRMAN DAVIS: But you also said you would turn over a million two that you intended to spend on --

MR. BROOKS: No, we did not do that because all that million two was all leading down the path of artificial reefs.

MR. HIGHT: I think we have a confusion here, Mr. Chairman. It's my understanding that Mobil agreed the cost of the demolition to go with whoever took the pier.

MR. BROOKS: Yes, that's correct.

CHAIRMAN DAVIS: Which is roughly in that neighborhood?

MR. HIGHT: Yes.

CHAIRMAN DAVIS: So you said, in effect, "If you want to take responsibility for the pier, pay
for the maintenance and liability, we'll give you the
money that we would have spent to demolish the pier"?

MR. BROOKS: Correct.

CHAIRMAN DAVIS: Any other offers or
subjects of any other concessions you made as a result
of your discussions with the opponents to this project?

MR. BROOKS: We have gone ahead and
voluntarily offset the air emissions even though it's
not required by local A.P.C.D. for the project.

CHAIRMAN DAVIS: Thank you.

CONTROLLER CONNELL: Mr. Chair?

Did you own the pier -- you must have in
1983?

MR. BROOKS: Yes. You can tell by my
accent I'm from Texas so --

CONTROLLER CONNELL: Yeah, I can tell
that. I was wondering how the pier withstood the storm
in 1983. We had a very serious storm in '83. How did
this pier do then?

MR. HIGHT: If you'll look at Photo Group
No. 2, it's pictures of what happened to the pier in
1983. And as you can see, large pieces from the middle
of the pier were --

CONTROLLER CONNELL: Missing.

MR. HIGHT: Yeah.
CONTROLLER CONNELL: Had you rebuilt the pier at that point?

MR. BROOKS: Yes. I'd also say in 1993, I believe -- somebody correct me -- we had to drive 80 piles to restore the integrity of the pier after some storm activity there.

CONTROLLER CONNELL: So you're anticipating that, if we don't do this before El Nino, we'll have similar damage and destruction?

MR. BROOKS: Yes.

CONTROLLER CONNELL: Did you have to close the beach in '83 in order to repair the pier then?

MR. BROOKS: I don't know the details of that.

CONTROLLER CONNELL: Do you know that, Bob?

MR. HIGHT: No, I don't.

MR. BROOKS: I would imagine so, that Mobil has.

CONTROLLER CONNELL: It looks pretty devastated, the damage.

CHAIRMAN DAVIS: Thank you very much.

MR. BROOKS: Okay, thanks.

Rea?
MR. STRANGE: Good morning. Rea Strange, Pacific Weather. I've been a consultant in Santa Barbara since 1960, basically, a marine meteorologist working for the oil industry, of course, the reason I came here to begin with.

Counties of Los Angeles, Santa Barbara, Ventura; utility companies such as G.T.E. and Southern California Edison -- I'm a consultant right now for -- I have been for years for the Diablo Canyon Nuclear Power Plant.

And basically, I guess, I've been a forecaster for that entire time and in contact virtually with every wave and every gust of wind that's at the area far too long a period.

CONTROLLER CONNELL: Actually, I'd like to have a conversation with you. I sail in that area.

MR. STRANGE: Well, I'll tell you. I'm a swimmer. I've put in between 3,000 and 4,000 miles in that ocean, and I love swimming. Nobody mentions swimming. Taking that pier down will enhance swimming enormously. It really will.

But I can answer any questions perhaps with respect to the wind and the wave climate. I think the issue here is with respect to the real cause for this peak in the waves just off that Spur Pier.
And it's generally conceded that the real
wave condition which makes this a good wave -- a good
wave, not an excellent wave, but a good wave --
sometimes the only real place one can find a halfway
decent wave is during times of a short-period swell.
Those waves are generated primarily just outside
Pt. Concepcion, a strong wind area out there.

And the period of the waves -- generally
right around eight seconds or so. And if these waves
are enhanced by shoaling, which is what's been
contended here -- it's the shoaling, the shallower area
right there, that's causing this to happen -- why isn't
a longer-period wave enhanced better? Because you get
a much greater shoaling action on a long-period wave
than a short-period wave.

I feel really there's something else
going on here -- primarily refraction, perhaps
diffraction -- that's causing that wave to be built up
at that point. And that's not going to make a bit of
difference whether that pier comes out or stays. It's
going to be just the same.

We don't have any real ground truth as to
what's happened in the past. We don't know really what
happened to that shoal area in 1982-83. We don't know
what happened to it in '85-86, which was just about as
bad a year. And we've had some dandy storms in '88 and '92, '93, and, of course, the one just a couple of years ago.

I would think, if we have a big year this year, that sandbar is going to be gone. Is it going to come back? Nobody really knows that. But I dare say, if it does come back, it may come back in a slightly different place. We don't know whether the removal of the pier is going to affect that. There is absolutely no way of knowing at all.

We had a wave gauge out there for the last 20 or 30 years. Perhaps we can go a little bit more. I'll guarantee you that that beach will change enormously if this winter is as bad as the El Nino's are saying it's going to be.

So I don't think there's any way really of pinpointing cause as to whether or not that little sandbar is caused by the pier. And if it is, is it going to change after this winter?

Monitoring is going to do absolutely no good whatsoever because we don't have any ground troops out there. We haven't been measuring. And I dare say we must have seen an enormous change in '82 and '83 after those waves hit. It came back, but it might have come back just due to natural causes if, indeed, it is
a result of shoaling. If it's not a result of
shoaling -- in other words, refraction, diffraction --
it's going to be there no matter what.
CHAIRMAN DAVIS: Does anyone have any
questions?
CONTROLLER CONNELL: No, thank you.
CHAIRMAN DAVIS: All right. We took
approximately 25 minutes to hear from the proponents of
this project; so I'm going to allocate 25 minutes to
the -- to the opponents of which there are seven. So
let's see. That is roughly a little more than three
minutes a person. So you will try and abide by that
limitation.
We'll start off with Glenn Hening,
Coastal Preservation and Research Foundation.
MR. HENING: Good morning, Commissioners
and interested parties. My name is Glenn Hening. I am
representing the Coastal Preservation and Research
Foundation, the group that generated the vision that we
have for a surfing park at this site. As it turns out,
I am also the founder and chief adviser of the
Surfrider Foundation.
In this particular situation, the
Surfrider Foundation does support the establishment of
a research site, not an artificial reef, but a research
site for wave action.

If I could call attention to some of the deficiencies in Mr. Moore's report, basically starting with the fact that he wasn't there from April to September when the good waves are there. And if he had been there from when the wind swells are coming down the channel as Mr. Strange talked about, he would have seen surfers sitting off the ends of both piers. Okay?

We feel that Mobil should take the piers out, but we also feel that the unique qualities of this particular place as a surfing recreational resource need to be recognized.

We feel that Mobil should be held responsible for participating in, through an escrow fund, through some kind of procedure that the Commission would control, the establishment of not only a park on the beach but actually a research site to find out what makes waves break there, what's going to happen if we try and induce waves to break there. That's where we want to go.

We want to create kind of like a Little League field that's also a place where benign marine habitats can be explored. And we want to combine science with stoke to create something that hasn't been done before, a surfing park.
We feel that our data shows that there are significant problems with Mr. Moore's report. When I started the Surfrider Foundation, I was working at the Jet Propulsion Lab in Pasadena. There, we would speak of data granularity and data gaps.

For example, Mr. Moore talks about imperceptible bottom features. Well, so they weren't able to see the bottom features, but the surfers certainly appreciate them when the waves are using those bottom features to break in a very quality fashion.

This place has been shown in surfing films time and again. It is a good surf spot. In fact, just last week, even though it was a long-period swell and everybody was up at Rincon -- in fact, if I may show the Commission, here is one of the best waves in the world right here (indicating).

Last weekend both parking lots were full, and there were cars parked all the way up Bates Road on both sides of the highway. People couldn't find a place to park. Well, if you take -- it's our contention that, without recognizing the value of the surfing resource here, that 200 surfers that were using this area next year won't have any place to go except to add to the impact on Rincon.
Now, one of the reasons we are here is because you can see how in 1971 the freeway was routed around the oil fields (indicating). Basically, it was a choice between put the freeway through the oil field or put it in the ocean. Well, they put it in the ocean.

And one of the important milestones in the history of the Surfrider Foundation or the reason for its existence was the destruction of an extremely high-quality surf spot right here known as Stanley's (indicating). So we think that there is a way to look towards maintaining this site as a surfing resource. We think that developing the land side of the equation as a park makes total sense.

In fact, we are happy to see some of our very recommendations in terms of stairways, and you can see the artists' depictions, which have been shown to the Commission staff. You can see that what we are trying to do is not only make this place better than Mobil left it on land, but we also want to use this special opportunity to create a research site to see what we can do about extending recreational resources for wave riders.

So my position is that we are not opposing the application per se. We think that the
application does have serious weaknesses. We think there are significant flaws in Mr. Moore's findings.

And we think that -- given,

unfortunately, my lack of knowledge of the discretionary powers of the Commission -- but we would hope that the Commission would take into consideration the idea of Mobil being required to participate in maintaining this site as a quality surfing resource.

Can I answer any questions?

CHAIRMAN DAVIS: Do you have any estimate as to what it would cost to establish this surfing park and research site as you envision it?

MR. HENING: Well, our foundation, being a 501(c)(3) nonprofit, is in a position to create a matching fund process. We would like to see Mobil start seed money for that matching fund. We have already developed plans to secure support from philanthropists and from interested surfers who happen to be quite wealthy in supporting the idea of creating a research site and beach park.

CHAIRMAN DAVIS: But do you have any idea as to --

MR. HENING: I don't know. Somebody said, "Well, you know, what's money to Mobil?" I don't know what to ask. But the idea of about a half a
million dollars, we think, would be an appropriate start towards what we would like to do.

CONTROLLER CONNELL: Is that what you are asking the Commission for is a half million dollars? You want us to render a decision that requests that Mobil pay a half million dollars to your organization?

MR. HENING: We would like Mobil to pay a half million dollars into a fund controlled by the Commission that our foundation would necessarily apply for. We are not saying that we have all the answers, but we think we've got the best solution for everybody. We can make Mobil look good by their underwriting the maintenance of the significant surfing resource. We can make the beach look good. And we can look towards maintaining good waves in the ocean because, as I said, if Mr. Moore had been -- and he was there on-site in December. He was on-site in January. But he wasn't on-site when the surfers were riding the good waves there April through September.

There's no user profiles. There is no population studies. Basically, it was a broad rush attempt to look at this place. But if you look at it in detail and you look at it with the 30 years of surfing experience that we have, you find that, yes, it is a good wave; yes, surfers go there to ride that
wave. That wave is an important part of our surfing resources, and we would like to see it maintained in one way or another.

CONTROLLER CONNELL: How do you respond to the argument by Mr. Strong (sic) that it is not going to be in any way affected by the removal of the piers? What's your contradictory evidence?

MR. HENING: I think Mr. Strange actually said -- he answered that question. We don't have the data. There is no ongoing -- there's no -- I think the phrase was "there's no ground truth here." Okay? And there especially isn't any truth in -- in ground truth in Mr. Moore's report since his report doesn't cover the period most actively used. We don't have that information to actually make the statement one way or another.

Even Mr. Strange says, "You don't know what's going to happen."

Well, Mr. Moore said, "We know what's going to happen. Nothing's going to happen."

But I think that conducting research at this site especially is our goal.

CHAIRMAN DAVIS: I don't think that's quite fair. I think they -- certainly Mr. Strange said -- and you can interpret Mr. Moore's comments in a
similar fashion -- nobody knows for sure, according to them, what creates the favorable wave action in this particular area. They can't find any evidence that it's the pier. And they believe storms and weather are more of a factor than the pier. But nobody knows for sure. That's the sense I got.

MR. HENING: Well, unfortunately, they don't know because they weren't there when this place is epic, as we say. I mean, this place -- people go from April through September. That's when this place is good. That's when the wind swells are here. And Mr. Moore didn't study that time period at all.

Also, there was -- I didn't see any evidence of any user profiles or population studies in Mr. Moore's report at all. So what I'm saying is, if you took a larger look at the data and filled in the gaps and you also looked at it in more detail, you would be able to identify "imperceptible bottom features."

Those bottom features make the waves break, and we are interested in maintaining this place as a surfing resource.

CONTROLLER CONNELL: Well, are you maintaining that the bottom features relate to the pier in some fashion?
MR. HENING: Absolutely, absolutely.

CONTROLLER CONNELL: In what way?

MR. HENING: In two ways. If I could draw your attention to the diagrams, you would find surfers -- you know, here are the two sites (indicating). Okay? Surfers don't surf over here (indicating). Surfers don't surf down in front of the seawall. Surfers use this place in two places: right off the end of the pier and in the shadow of the pier and off the end of the Short Pier. That's where people ride waves April through September. Okay?

You don't have -- now, this is also a fairly quality surf spot here (indicating). But essentially what we are talking about is the surfers are locating their takeoff point in relationship to the piers.

Now, I'm not saying that the actual data to support that is existent right now. I think Mr. Moore's study could have gone a long way toward establishing where the surfers are when they are riding good waves.

But I know, in my 30 years of experience surfing this area and especially, you know, dear departed Stanley's, which was a really world-class wave, I know that, when you go surfing here, you paddle
out off the end of the pier, and you sit next to the pier (indicating).

And if that usually gets too crowded, which it does, then you can go down and surf in front of the Short Pier. That's the real data with respect to what the surfers are doing when they are there. They are surfing by the piers.

So we feel that, in this particular case, this actually shows an underwater topographic gradations of the site. There is an actual peak that forms off here (indicating), and surfers sit out here (indicating), and they ride in here (indicating).

There is another peak, depending on the swell condition, that forms here (indicating) and actually breaks into the shadow. You can see guys going this way because the pier scour (indicating). So there's deep waters here (indicating), shallow water here (indicating), and the surfers can actually ride towards the deep water.

If this area is too crowded (indicating), you'll see guys out here surfing a pivotal peak that breaks out in front of this pier at low tide (indicating). The tides make a lot of difference. The swell makes a lot of difference. But the reality is surfers surf in front of this pier (indicating), and
surfers surf these two peaks off the spur (indicating).

And it's our contention that the reality
of surfers using this place not covered in Mr. Moore's
report would necessarily give pause to anyone who says
taking the piers out doesn't make any difference.

CHAIRMAN DAVIS: Well, don't people
surf -- are you saying that they are surfing in off
months when Mr. Moore was here? Don't they use the
piers for their takeoff point?

MR. HENING: It depends on the swell, but
basically yes. That's when surfers are -- they are
using the piers as their locus point, if you will -- is
basically done year-round. However, as Mr. Strange
pointed out, the long-period swells break differently
here than the short-period swells.

And it's those short-period swells when
all the other places up and down the coast are blown
out that you can't go surfing -- it's too choppy
everywhere -- you can go to the oil piers, sit out off
the end of one of these piers from April through
September, and get a good wave.

CHAIRMAN DAVIS: Okay. Any other
questions?

(No response.)

CHAIRMAN DAVIS: Thank you very much.
MR. HENING: Your welcome.

CHAIRMAN DAVIS: Next -- forgive me for not making out the first name, but Cratch is the last name, C-r-a-t-c-h, from -- looks like Umpire Wave in Ventura?

MS. CRATCH: Hi, that's me. I'm actually speaking in favor, and I thought you were taking everybody who was speaking in --

CHAIRMAN DAVIS: Well, I'm just taking --

MS. CRATCH: You're just taking everybody?

CHAIRMAN DAVIS: Yes. You were next to speak.

MS. CRATCH: Next? Great.

CHAIRMAN DAVIS: Actually, I did want to do everyone in favor, and I thought we had. So forgive me for -- does anyone else on this list want to speak in favor?

(No response.)

CHAIRMAN DAVIS: Okay. Please go ahead.

MS. CRATCH: I'm a resident of the city of Ventura. My name is Celia Cratch. I'm sorry you couldn't make out my handwriting. And I made the drive down from beautiful Ventura to less-than-beautiful Los Angeles so that I could be here in person to say please
approve this negative declaration.

We are ready for our coastline to be
restored to us. We are ready for those piers to go.
And whether or not we are ready for them to go, it's
very possible that they will go in El Nino as
Mr. Valentine referenced and as Mr. Moore referenced.
We are facing some severe winter storms, and we need to
be ready for that.

And Mobil has an obligation to remove
those piers, and they are willing to fulfill that
obligation. They are willing to meet the needs of
their agreement. They are willing to take those piers
out. They have a plan that is environmentally sound.
They have a plan that will allow beach access, which I
understand was a concern. And they have a plan to
begin next month.

So approval today means they begin next
month, means we have our coastline restored to us next
year. And that is important. We need to have that.
And I don't discount the importance of good surf. I
look at the surfer, and I recognize that passion. And
it's a valid one.

But I don't feel like the indications are
that the piers cause the surf. There haven't been any
strong indications that that is the case. And I don't
feel like Mobil should be held for ransom to fund a surf research laboratory.

If Mr. Hening has a 501(c)(3) nonprofit, you can raise funds to do that, and you can invite Mobil to participate. And maybe they will. But I don't think that they should be required to do so.

So as a resident, I'd like to see the piers gone. I'd like to see the coastline restored. And I'd like them to start next month.

CHAIRMAN DAVIS: And I assume you're not a Mobil shareholder?

MS. CRATCH: I'm not a Mobil shareholder. I have no family members who work for Mobil.

CHAIRMAN DAVIS: You live in the general area?

MS. CRATCH: I live in the city of Ventura. I live up in the hills.

CONTROLLER CONNELL: Thank you.

CHAIRMAN DAVIS: Thank you so much. All right. The next speaker is Mr. Brooks, Gary Brooks, of Dallas, Texas.

MR. BROOKS: I already spoke.

CHAIRMAN DAVIS: I'm sorry. He already spoke, yes. Excuse me.

Can you help me with this?

CHAIRMAN DAVIS: I need to have another eye exam, one or the other.

MR. HOLCOMBE: Well, thanks for allowing me to speak today on this issue. My name is Rob Holcombe. I represent Yvon Chouinard, owner and founder of Patagonia. I am a surfer. I surf that site as often as I can. I just kind of threw that in there.

I'm here to express my concern regarding what I believe will happen to a favorite surf site of mine should the proposed decommissioning of the oil piers take place. I'm concerned that the removal of the piers will have a significant adverse effect on recreational surfing as our expert, who we hired and paid multiple thousands of dollars to, has concluded.

If I may, I brought copies. I don't know if it's appropriate to give these to you (indicating).

MR. HIGHT: They already have them; so it's okay.

MR. HOLCOMBE: Okay. I'm just going to speak about these.

(Copies handed to members.)

MR. HOLCOMBE: At this point, with you having those, I was going to go to the second page,
which I just wanted to pull out as I was listening to a lot of the conversation going down before I came up here.

I was going to jump down to Section (c) on the second page right about in the middle. I was going to start where it says here -- I'd also like to say that Professor Dally is also a surfer.

"Placing an obstruction in this otherwise well-organized, shore-parallel 'river' not only deflects the current around the obstruction, changing the flow pattern locally, but also introduces strong turbulence. This flow disruption causes scour of the sand bed in zones of strong current and turbulence, and deposition in zones of reduced current and turbulence, thereby creating bottom features such as those found at the wharves in question."

I'm going to move down to (d).

"If the wharves are removed in the manner intended, their hydrodynamic disruption will also be removed, and the surf-enhancing bottom features will eventually be smoothed out and eradicated by waves and longshore currents. The bottom contours will adopt a more straight and parallel pattern, as is presently found in the shallower beach region... between the Spur Pier and Short Pier. The persistent hot-spots of
enhanced surfing... will be lost."

I wanted to point that out so everyone could have a chance to hear specifics that our expert has provided.

I then also would like to go on with -- I also feel that the majority of the people making decisions regarding this issue do not have the understanding of what makes a wave attractive to a surfer specifically.

In defense of the quality of the oil piers' break -- this is all from my own personal experiences -- it tends to clean up wind swell better than anywhere else. I live in Santa Barbara. I work in Ventura. I drive by this area two times every day. I have multiple surfboards in the back of my truck. I'll stop wherever it's best and surf. And I often find myself in this spot.

There was a lot of talk about Rincon Point and the point just above there, which we refer to as Little Rincon or La Conchita, the point break in the diagram right here (indicating). That is a point break. But nobody has made mention to you -- and, again, I don't think many people understand what a peak break is.

And the oil piers produces what I would
call at times it to be an absolutely perfect "A" plus peak break, a wave that breaks both directions, right and left.

I personally got some of the best left-hand waves of my life at the oil piers, which I could not find anywhere else in Ventura-Santa Barbara counties. I've gotten some of the best right-hand tubes of my life there as well, which I have not been able to find in Ventura-Santa Barbara counties.

I also believe that the peak is dependent on the pier's spur because we sit, we line up right off of it. And you can sit there and watch on a good day from the surfer's eye perspective and know what you are looking at has to be caused by the fact that that pier is there.

In closing, I just wanted to read a letter on behalf of Yvon Chouinard very quickly.

"Dear Chair Davis and Honorable Commission Members: This letter is submitted on behalf of Patagonia, Incorporated, to advise the Commission of the negative declaration proposed for this project.

"It is inadequate for all the reasons stated in our prior comment letter and in the comments of others, including the Environmental Offense Center and the Surfrider Foundation. We hope that you
carefully review and consider all of those comments before making the decision to go forward with this project.

"Patagonia does not oppose removal of the oil piers per se. Our primary issue of concern is that Mobil has failed to provide any mechanism to identify and mitigate it for anticipated adverse impacts of recreational surfing, which our experts believe will occur as a result of the removal of the oil piers.

"We wish to stress that we offer to negotiate this issue with Mobil and propose two alternative mechanisms for addressing the concern, either of which would have allowed the project to go forward without delay. Mobil has declined both alternatives and has made no counter proposals.

"We also wish to emphasize our concern that the Commission evaluate very cautiously any claim that this project must be rushed through to avoid anticipated damage from El Nino.

"Too often the threat of flooding or other storm damage is used by public agencies and private parties to avoid their obligation to conduct their activities in the most environmentally sensitive manner possible.

"Finally, please scrutinize carefully any
claim that citizens concerned with the environmental
protection are responsible for delaying this project.
If the legally required documents -- if the legally
required environmental documents had been prepared in
the first instance, as members of the public requested,
the process could have been concluded long ago.

"We, therefore, ask that you decline to
adopt the proposed negative declaration. In the
alternative, we ask that you impose the mitigation
measures Patagonia requested as summarized in the
attached.

"Thank you for your consideration, Yvon
Chouinard."

And the attached -- I take it you have
copies of that. Could I answer any questions?

CHAIRMAN DAVIS: Yes. First, let me make
an observation. Under state law, when an oil well is
decommissioned, you have to remove the pier. And
that's an obligation of the oil company to restore the
site to the condition it was in prior to the drilling.

So this is not something Mobil is doing
just because they decided to do it. That's their
obligation. Our obligation is to make sure that that's
done in an environmentally responsible way, and that's
why we are having this hearing.
And, frankly, I think it would not be wise of any of us to ignore the warnings of El Nino. I think that's a legitimate consideration for all of us to take into account.

But having said that, could you please speak to the settlement offers you've made to Mobil that they declined.

MR. HOLCOMBE: I'm sorry. You want me to --

CHAIRMAN DAVIS: Just describe briefly -- you said something about you made two settlement offers or two settlement proposals that they declined?

MR. WOOLPERT: I can do that.

MR. HOLCOMBE: Yeah, I believe Reeve is also representing Patagonia as well. He will be speaking shortly after me, and I would rather leave that to him.

CONTROLLER CONNELL: I don't believe we had his name.

Did you sign up -- could you sign up with the clerk?

MS. SHAW: You should have a slip.

MR. HIGHT: It's No. 5, Mr. Chairman.

CHAIRMAN DAVIS: All right. Good. Well, then, are there any -- any current questions?
CONTROLLER CONNELL: Yeah. I appreciate your testimony. It was really helpful. I had a couple of questions.

As I looked at the Patagonia proposal -- would you rather that I direct that to the next speaker or --

MR. HOLCOMBE: I would prefer that.

CONTROLLER CONNELL: Okay. Then I'll hold on my questions. Thank you.

CHAIRMAN DAVIS: Thank you very much.

COMMISSIONER WADDELL: Thank you.

MR. HOLCOMBE: Thank you.

CHAIRMAN DAVIS: All right. Reeve, do you want to speak next?

MR. WOOLPERT: Sure. Thank you. Thank you, Commissioners and staff, for the opportunity to address the Commission on this issue.

First, what I'd like to do is state my credentials, and hopefully I won't take my entire time doing that. I'm a sixth-generation Californian with family roots dating back to the 1770's in Santa Barbara and San Luis Obispo counties. I grew up in San Luis Obispo and began surfing the Astero (phonetic) Bay and San Luis Bay areas in approximately 1960, making frequent surfing trips to both areas during my
childhood.

Once my friends and I were old enough to drive, we regularly roamed as far north as Santa Cruz looking for surf, with southbound surfing trips taking us to Santa Barbara and Ventura counties and occasional safaris to San Diego and Baja.

For six years I've lived in San Diego.

For six years I've lived in San Diego and frequented surfing breaks between San Clemente and Baja Del Sur before moving to Summerland just above the project site in 1973, where I now live.

While living in Summerland, I focused my surfing on the sites between Santa Maria River Mouth and Malibu Point. For the period between about 1964 and 1990, my primary concern and activity was surfing.

I have been an avid collector of surfing magazines since their inception in the early 1960's. I have in my possession almost every issue of every surfing magazine published between 1960 and about 1980. I also have a large collection of books on surfing as well as a number of surfing guides.

In 1986 I was elected to the Board of Directors of the Surfrider Foundation and served as a board member until 1992. When I joined Surfrider in 1986, the organization had just over 400 members. At
about the time I left Surfrider, I was told it was over
20,000 members.

While on the board, my duties included
board chair, board historian, and chair of a number of
committees including Surfrider's Environmental Surf
Enhancement, which has to do with the development of
concepts for building artificial reefs, Newsletter, and
Legal committees.

For approximately three years, I was also
a paid consultant to Surfrider, acting as Surfrider's
Surf Enhancement Program coordinator. In that
capacity, I was responsible for researching ways in
which surfers may one day expand surfing's
opportunities through facilities that are
environmentally acceptable and other surfing options.

Throughout my surfing career, I have
surfed perhaps hundreds of different surfing breaks,
including reefs, points, sandbars, sand spits, rocks,
piers, harbor mouths, river mouths, coves, jetties,
breakwaters, dredge spoils, and the carcass of the
ground's crater.

In addition, I have read about,
researched, talked to, or reviewed the accounts of
surfers surfing at nearly all of the surfing sites that
occur along the California coast.
A typical surfer in California relies upon the limited combination of diverse and at times widespread surfing sites. Most surfers travel among these sites, evaluating their changeable qualities, including the sites' carrying capacities, looking for a suitable surfing conditions. Site surf-ability, character, and quality varies dramatically from swell to swell and from site to site and through the day and throughout the season.

Surfing is often a hit-or-miss proposition with the admonition, "You should have been here an hour ago," to surfers at every stop. Some surfers though frequent one site more than others or may have a long history of use at a particular site. These individuals are considered the site's locals and thus will glare at authority at the site usually at the expense of nonlocals.

There are a couple of points I would like to make initially. And that is that --

CHAIRMAN DAVIS: Would you mind starting by addressing the Controller's questions?

MR. WOOLPERT: Of course. I don't want to lose track of my notes. If I could just make these two points. Thank you very much.

Number one, we are, I am, Patagonia is in
support of the decommission. There's no question about that. It definitely will be an improvement in most quarters.

We do have concern about due process and public involvement. The announcement of this meeting came about two weeks ago. The Commission staff -- as far as I know. I believe that's correct. I'm -- at least our acknowledged -- our copy of that announcement. Also, it wasn't until, I think, Tuesday of this week that we did get the staff's comments on public response.

I'm not a profession -- I'm a teacher. I teach computer animation. I don't do this for a living. So it took me a long time to come up to speed. It took me these two days to come up to speed. You should see my notes. They are a big mess right here right now.

But the point I'm trying to make is you will benefit, the coast will benefit from greater input from the public. We need an appropriate amount of turnaround time, and we are concerned that we haven't had that to give you comments on some rather substantial changes to the project description, which, in particular, are the changes to the public access aspects of it.
For the first time on the way down, Rob
and I had a chance to stop by the piers and did look at
the northeast proposed pedestrian access, and we looked
at the south pedestrian access.

We have comments on those, if you'd like
to ask myself questions about that. If you would like
to ask me some questions, I just wanted to be sure that
those two concerns were in the record.

CONTROLLER CONNELL: Yes. I would like
to have you help me go through this Patagonia proposal.
I'm assuming that someone, perhaps you, can help the
board understand why each of these components was
included in the Patagonia proposal for mitigation.

I think we are now -- the board is now
understanding that no one feels that we should not -- I
hope I'm correct in saying this -- no one feels that we
can just keep the piers up.

MR. WOOLPERT: Correct.

CONTROLLER CONNELL: Everyone understands
the piers have to come down?

MR. WOOLPERT: Uh-huh.

CONTROLLER CONNELL: And what we are
trying to do at today's meeting here is determine,
given the fact that the piers have to come down, what
is an appropriate action for this commission to take in
Can you go through with us your thinking from Patagonia in terms of why you felt this was a fair and equitable proposal?

MR. WOOLPERT: Okay. I think we have to begin with a clear understanding of the impacts to surfing. They've been discussed. It needs to be well understood by yourselves, as well as I think all regulatory agencies, that surfing has unique requirements, unique dependencies.

The access plan proposes that there will be a net benefit to the use of the area because of the increased access. Surfers cannot trade off, compete with the city access to waves for beach access. These are two different things. We cannot trade access to waves and surfing for boardwalks, vistas, and other amenities.

As Glenn Hening pointed out, when you discussed the condition at Rincon recently, surfing is extremely crowded. It's extremely aggressive. It cannot compare to anything that you've ever done unless you do it.

I used to surf at Rincon for about ten years. I no longer can do it because I can't compete...
in that atmosphere. I don't have the -- I'm not strong
enough. I'm not fast enough. And I just don't like it
anymore. It's a beautiful wave. It's a world-quality
wave as you all know, as Glenn mentioned. It's just
not the place for me. The oil piers is an appropriate
place because of my age. It's an appropriate place for
families.

I think we have to understand that, in
surfing, that surfing is overcrowded. It is extremely
overcrowded. There are regularly fights. I brought up
an article here, surf nazis. You've seen them in San
Francisco Chronicle, the L.A. Times, the San Diego
newspapers about encounters that occur.

These happen regularly. They don't
happen -- I don't know if you've ever been attacked
when you're skiing or if when you are out on a boat --

CONTROLLER CONNELL: No, I attack myself
on the slopes. I cause damage to myself.

MR. WOOLPERT: Right. But not by other
surfers. And it's a remarkably different feeling. So
the point I'm trying to make is that what can we do to
bring you up to speed and the Coastal Commission and
Army Corps of Engineers so that you can appreciate the
unique needs of surfing? Once we are at that point,
then a discussion of mitigation becomes much more
communicative and understandable.

For example, the mitigation package, as proposed by Patagonia, tries to avoid surf enhancement because of the reasons that others have expressed. I'm a die-hard advocate of surf enhancement, and I don't want to talk about that right now. Others will talk about that.

But what we look at as appropriate mitigation is that every missed opportunity for surfing be valued and that it be mitigated at this site. That's being done presently in the court down in Huntington Beach when the American Traders spilled oil on the beach in 1992. We'll soon have a credible model for value of surfing. It may be $8 like one site suggests or over $30 like another site suggests. But we don't know for each day of surfing that's missed.

By the way, I was very involved in the El Segundo-Chevron settlement where, for the first time in the history of surfing, there was a value put on surfing. And I was the first person to do that. I lived in --

CONTROLLER CONNELL: What was that value?

MR. WOOLPERT: I went to the surf and water park, and it's a model. It won't hold up in the courts. But I looked at what a surfer would pay to go
to Raging Waters in San Dimas, which turned out to be
at the time about $18 a day.

So what I did then was I used that figure
and applied it against a baseline study that was
consducted by Chevron to establish the quality of the
surfing that existed at El Segundo before the
improvements were made by Chevron.

Once -- before I applied that, Chevron
had offered us $5,000 as written with Surfrider. My
environmental director said it might be somewhere
around $12,000. The Coastal Commission staff person
suggested about $17,000. I went back to Chevron with a
$30,000 offer. Before I read the reports and applied
my figure, went on vacation, applied my figure, turned
out to be about $250,000 if you apply that $18 per day
per surfer that lost surfing opportunity.

And what I would like to see is a similar
application of credible science and environmental
economic modeling applied to this. And that is
where -- one place where Patagonia is coming from.

Now, in doing the valuing, you have to
have a baseline beginning. It's too late for that.
You know, a year or so ago, I think we had -- our first
opportunity was the first release of the -- for a
common period that we had the opportunity to begin such
an effort. It's too late now with El Nino, et cetera.

But I think we can do a credible baseline study in retrospect through a survey method of existing surfers -- myself, Rob, others who surf there -- 50 or more people, passersby, Mobil workers, et al., people who have observed the frequency of use. Once we -- that's what -- one of the aspects of Patagonia's proposed mitigation plan.

The second aspect is to follow that up with a surf-monitoring study that has a long enough term that it can dampen out the effects of El Nino. So that might take a year or so, and that's not a big deal. You know, I don't think it will cost a lot of money to put someone on-site for a periodic time. There's a template in place that was used by Dr. Andrew Listner (phonetic) in El Segundo at -- for the Chevron case.

CONTROLLER CONNELL: What are you suggesting?

MR. WOOLPERT: That we do post-project surf monitoring so that we now can compare what the conditions were like before and what they are like afterwards. Therefore, the argument --

CONTROLLER CONNELL: Once we take down the pier?
MR. WOOLPERT: Absolutely. Therefore, these arguments between the consultants now are drawn to a conclusion. And I have a big question mark about the benefits -- about the impacts of removing the piers. I don't know for sure that's going to happen. I bet it might. I might put ten bucks on it but not a lot of money.

The surf may be there. It may be diminished. But we don't know. You know, I don't think -- either side can't conclusively say that the removal of the piers will remove the waves or not remove the waves. That's not a conclusive point.

Mr. Davis?

CHAIRMAN DAVIS: Yeah, I just want to -- you raised the question I want to ask, well, actually, the attorney general. What is -- let's assume for argument's sake -- I don't think this is the case, but let's assume for argument's sake that taking down the pier has some detrimental effect on the wave action in that area although clearly it has beneficial impacts in terms of beach access and benefits to swimmers and things like that.

Are we under some obligation as a commission to require further study? Or can we conclude that the total net impact to all users of
the -- of the area, you know, is enhanced or not enhanced depending on how we calculate it?

MR. EAGAN: In other words, assuming --

CHAIRMAN DAVIS: Is there any one user, let's say the swimmers -- their plight is worsened by taking down this --

MR. EAGAN: So we are assuming, for purposes of this discussion, that it has been established as a fact which staff and the Noble report dispute that there would be a negative effect on the wave. Then it becomes a legal question: Is the effect in the language of CEQA and the guidelines as significant adverse environmental impact?

And I think the staff is well within the law in concluding that no, you have to look at recreational opportunities on this stretch of beach not just from the standpoint of one class of users but from the standpoint of all potential users: the family that wants to picnic on the beach, walk along the beach, or just to take a look at the ocean or beachcomb or something of that nature.

And if you look at that as your unit of concern, then the net effect is a beneficial one for taking out these piers.

CHAIRMAN DAVIS: But is it appropriate to
net out the opportunities?

MR. EAGAN: Yes.

COMMISSIONER WADDELL: To follow on that, again, making the assumptions that we are making, what you have is an incidental positive benefit, if you will, with these piers: i.e., the surf. Is there any case law under CEQA that talks about the kind of incidental -- I mean, it's clearly unrelated, the original purpose why the structures were created in the first place.

Is there any case law that talks about obligations to mitigate in that context?

MR. EAGAN: Not that I'm aware of.

MR. HIGHT: Mr. Chairman, this is an interesting legal question: Is there a duty to mitigate for an artificial condition? And in the case that they were talking about a minute ago, the Chevron, that was a condition, that was a placement of an artificial condition in the ocean. This is the removal of something that was artificial that was required to be removed.

MR. WOOLPERT: I make the comparison with Chevron not for that purpose. I know those are substantially different issues. What we are seeking is -- we don't want to hinge -- for example, if we
assume the premises of Mobil and Noble that the waves will persist, we are very concerned about beach closure, any beach closure, that takes place and any loss of surfing, not just long-term but short-term.

For example, the beach access plan proposes that there will be new access ways. But for maybe a two-month period or more, depending on El Nino and other effects, the beach will be closed. That is an impact that we want to address. Also --

CHAIRMAN DAVIS: Wait a minute. You can't hold Mobil responsible for anything that El Nino creates.

MR. WOOLPERT: No, I'm not suggesting that.

CHAIRMAN DAVIS: Well, that's what I thought I heard you say.

MR. WOOLPERT: Well, if Mobil -- Mobil is suggesting it will take two months to remove the south wharf. If that takes three months because of El Nino, do we look at the difference and just assume that Mobil's two months is the only appropriate period for mitigation? Well --

MR. VALENTINE: Mr. Chairman, excuse me, if I may, sir. What the witness is talking about is that, during the initial stages of demolition, this
beach (indicating) to the south of the main pier will be closed for a period of two months based on the plan that you have before you.

We believe that the public access mitigation package, which was negotiated with staff, put together by Mobil, compensates for the loss of that beach in a way that enhances long-term public access and in a way that dollars would never compensate.

CHAIRMAN DAVIS: All right. Could you wrap it up in about a minute here because we're over.

MR. WOOLPERT: Sure. We are mixing issues here again. It needs to be understood by your commission and others that surfing has unique concerns. Maybe there are legal reasons why you can't consider surfing unique. It's very overcrowded. We need every wave that we have. We need to protect earnestly every one of those.

The other issue is the access plan. The access plan does not provide any additional benefits to surfing for those two or more months that we will not have access. The access plan, which we haven't even had a chance to completely evaluate, also proposes that, after the south pier is removed and the fences -- and access is restored to the beach, that we can go out and surf in this construction zone.
If, as you saw in those 1983 pictures of El Nino, similar events occur, we are going to have to breathe throughout that water. And surfers should not be allowed back in the water. You should be concerned about the safety.

Therefore, I believe that the decommissioning activities will probably require more extensive closure than what Mobil is presently suggesting. If that's the case, we want that mitigated.

It is being mitigated -- surfing was looked at as an independent recreational use and value when American Trader dumped her oil on Huntington Beach. We want the same policies to be in place here and for other future possibilities of losses to surfing.

CHAIRMAN DAVIS: Okay. Thank you very much.

MR. WOOLPERT: Is there any more questions?

CHAIRMAN DAVIS: No. Thank you.

CONTROLLER CONNELL: Mr. Chairman, may I ask a question of the Attorney General's Office?

CHAIRMAN DAVIS: Sure.

CONTROLLER CONNELL: I have a question,
Dennis. This whole issue of litigation based on recreation rights -- how far do we go on that? I mean, are we creating a new category of uses here today that then becomes precedent-setting for this commission as we look at other issues related to California's coastline as a commission?

I mean, I'm trying to understand, you know, what the law currently states about recreation rights. Is it specific, Dennis, as it relates to a subcategory of a user for a particular recreation right? And is there any guidance, following up on my colleague's questions, as to how that priority is established in terms of artificial and unintended benefits that are later taken away?

MR. EAGAN: I don't think on either question is any clear guidance in the decisions of the courts. But we are thrown back really on what the first reliance always should be, which is the language of CEQA and the guidelines.

I think the staff is on firm ground when it says, "No, the Commission doesn't have to isolate on one subset of recreational users and consider only their needs and only benefits to them when assessing from the standpoint of recreation generally what the impacts of a particular proposed project are."
I think the staff is also quite right, based on the evidence in front of the Commission, saying that the net benefit here is clearly to the good, on the plus side, in terms of recreational use from a slightly more general -- beach recreational use from a slightly more general perspective.

But I cannot represent to you that there's any case right on point that validates what the staff is asking you to do. I can say I think they are on very firm logical ground given the directives of the legislature and O.P.R. and the guidelines.

CONTROLLER CONNELL: Thank you.

CHAIRMAN DAVIS: All right. We have two more speakers.

Mr. Lyon, Roger Lyon?

MR. LYON: Good morning. My name is Roger Lyon. I'm an attorney with the Surfrider Foundation. And I've been surfing since I was nine years old, and I've been surfing at the present site since high school. That's a long time.

There are a couple of things that I want to -- a couple of comments I want to make based on what I've heard today, and then I want to get into the substance of my comments.

First of all, why aren't there any
surfers testifying in support of this? It's because there is a wave at the oil piers. And if you go to the site, you'll see that it looks like the oil piers are creating the surf spot. And as a result, if you take them out, there's a good chance for a fair argument that there will be a detrimental impact on recreational opportunities.

Now, Mr. Moore, who prepared this report and purports to be an expert on the spot, when you asked him -- Mr. Davis, when you asked him if he surfed or if he has frequented the particular site, he said "Oh, you know, I go there every year, and I go camping at El Capitan." Well, that's about 50 miles west of the site.

Now, Mr. Moore, I understand -- his office -- they are based in Irvine. Okay? And Mr. Hening pointed out the study was done in a time when these waves are not good at this site. So I just wanted to clarify those things.

Now, the next thing I want to clarify is the Noble report cost $40,000. That's the number that I heard. I'd like to ask who paid that $40,000? Just keep in mind, you know, who paid for this report when you're looking at --

CHAIRMAN DAVIS: Again, in fairness, the
MR. LYON: I used to be a real estate attorney, and there's a particular kind of appraiser called an M.A.I. appraiser. I think it's "Master of Appraisal Institute" or something. And the joke in the real estate industry is that that really stands for "Made As Instructed."

Anyway, I'm not being paid to be here today. Okay? I'm here because I'm concerned about the loss of the surf spot. Too many other surf spots have been lost because of governmental agencies. Developers have overridden the interests of the public, the interests of the surfers.

The primary use of this site today is for surfing. There is actually some jet skiers that go out there. There's some people that go beachcombing there. It's used for other purposes too. But the primary use of this spot -- if you go there on any given day, most of the people that are there are surfers.

Okay. There's no problem with access there today. Pull up, park right there, go down to the beach. They talk about enhanced access. They are talking about opening up a couple of access sites that are open already, but they are talking about improving
them. Okay? So when they talk about a net improvement in recreational opportunities here, I don't think there's really much of a net improvement here.

I mean, we are really talking about there's some good access today, and then they are going to close it. And there will be no access for some period of time. And then after they are done, they'll open it up, and it will be slightly better. And, okay, the piers will be gone. You can walk up and down the beach a little easier.

And what Mr. Strange said -- it will be better for swimmers. That's true. But not many swimmers go there right now. So I think that's kind of a red herring.

CHAIRMAN DAVIS: Is that fair? I mean, why would swimmers go there if surfers are using it? I mean, it's not a fair comparison.

CONTROLLER CONNELL: Well, and that's -- again, you couldn't put a child in the water when --

MR. LYON: Actually, you could. You could. You could swim here. Okay. This is your access route right here (indicating). The jet skiers -- they drive down here (indicating). They drop their jet skis down here (indicating), and then they go out here (indicating). This area here is pretty good...
for swimming (indicating). See all the sand here (indicating)? Okay? This area is good for swimming.

Now, if you started swimming here (indicating), you could swim up to here and back (indicating), but you couldn't start here and then swim through the piers (indicating). That would be too hazardous. You wouldn't want to do that.

CHAIRMAN DAVIS: You wouldn't want to get caught up with all the surfers either.

MR. LYON: Surfers and swimmers and boogie-boarders -- there's been talk of -- there's been talk of localism, territorialism, and it does exist. But when you are out there surfing, even though there's this aggressive nature, you know, there is kind of a brotherhood among all ocean users.

And if somebody, you know -- if a swimmer comes swimming through, usually the surfers are more like "Hey, how's it going? Way to go," this kind of thing. So there's really not much of a conflict between those kinds of uses.

CONTROLLER CONNELL: I thought your earlier speaker said there was. He said from the surfer magazines that there is this vandalism or this -- you know, this class warfare going on between the board surfers and the body surfers and the other
classes of skiers --

MR. LYON: Skiers and snow boarders.

CONTROLLER CONNELL: Well, no. But he was using that as an example. So you're contradicting his testimony.

MR. LYON: No. What I'm saying is yes, there is this aggressive nature between the surfers. But if a swimmer comes through, normally there would be no conflict there. And, in fact, between most surfers, there is no conflict anyway. You know, in any bunch of people, there's always going to be somebody who has a bad attitude. And, you know, that's true of surfers as well.

COMMISSIONER WADDELL: Aren't you running the risk of unduly minimizing the likely effect for the removal of those piers is going to have on other recreational uses?

If I'm a swimmer, if I'm a beachcomber, and I'm faced with a choice of selecting the beach where there is this huge old pier in front of me or another place where there isn't such a pier, I'm going to go where there isn't a pier. It seems reasonable to assume that other recreational uses are going to be enhanced when these piers are gone.

MR. LYON: I am minimizing it because --
what I would advise you is to go to the site and look
at it and see because, if you go there and you go to
the other beaches near there, you'll see that there are
other beaches that are better suited for swimmers.
This beach is particularly well-suited for surfers.
That's its primary use right now.
I mean, forget the reports. Go look at
the site. I mean, that's the only way. And to get a
good perspective from the surfers' point of view, you
have to go there on a day when the surf is good too. I
mean, that's the only way to get a real feel for what
this spot is about.

CONTROLLER CONNELL: I'm confused. I
mean, we already concluded -- I think it's pretty
clear -- that we are taking the pier down.

MR. LYON: Yes. And the Surfrider
Foundation and I personally --

CONTROLLER CONNELL: Let us move onto the
next point since we are running out of time here. We
are taking the pier down. The question is what are we
going to do to mitigate the removal of the pier?

Now, I don't hear you offering the
slightest suggestion here in your testimony, unlike
others, as to what you want to see this commission do
when we take the pier down. What are you suggesting?
MR. LYON: Actually, what the Surfrider's position is -- and I hadn't even gotten to the substance of my comments. But the Surfrider's position is that you have a duty to either require mitigation or to -- excuse me -- identify mitigation or require an environmental impact report. We are in favor of an environmental impact report.

Now, I think that probably mitigation is a better avenue. And because, as has been pointed out, there is some dispute in the surfing community as to what mitigation should be, the Surfrider Foundation is not taking a position on that issue.

CONTROLLER CONNELL: So you're not coming here before the Commission today suggesting what kind of mitigation you feel would best serve the need of the surfers that are currently using this pier?

MR. LYON: That's correct, although I would suggest that certainly, if Mobil wants to -- I understand they have a legal obligation to take this pier out, and we are in favor of that. I do believe that they have a duty to mitigate -- they have a duty to leave the site in at least as good a shape as they got it in.

And they've been using it for decades, making all this money off of it. And I think that
money is, of course, going to be -- it's always going to be the best means of mitigation. Now, what is done with that money, you know, the C.P.R. Foundation is a good -- that would be a well worthwhile charity that could use the money.

There are probably other charities that could use the money also for mitigation purposes. And I'm not suggesting any particular form of mitigation in an artificial surfing reef or, you know, showers or water quality testing or anything like that. There is a wide range of options, and I'm not suggesting any particular one of them. But I can say that there are a lot of options.

Now, I would like to make a few comments also.

CHAIRMAN DAVIS: Could you be brief because you are really -- we have one decision to make, whether or not the negative declarations are adequate relative to what everyone agrees has to be done for a variety of reasons: namely, to take the pier down. So the only value your testimony will serve is to share what kind of mitigation you think is appropriate. Otherwise, this is not relevant.

MR. LYON: Well, I disagree because I think --
CHAIRMAN DAVIS: Well, I'm the chair, and we're running out of time here. So if you want us to take you seriously -- otherwise, you can continue to speak at your own peril.

MR. LYON: Well, I believe the threshold question is whether to require an E.I.R. or to identify mitigation. And the California Environmental Quality Act says that an E.I.R. must be prepared if a project may have a significant impact on the environment.

CHAIRMAN DAVIS: I don't think anyone can say, based on what we've heard, that it will have a significant impact. It may, but I don't think anyone is saying it will.

MR. LYON: The California Supreme Court, in Friends of Mammoth v. The Board of Supervisors, said that CEQA should be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.

Further, in No Oil v. City of Los Angeles, this California Supreme Court established a three-tiered test for determining when an E.I.R. must be prepared.

First, a leading agency determines whether a project is exempt from the statute or is
certain not to cause significant impacts on the
environment.

Second, if the project does not fall
within either category, the agency must prepare an
initial study on whether it must issue a negative
declaration or prepare an E.I.R.

Third, the lead agency must prepare an
E.I.R. if there is substantial evidence from which a
fair argument may be made that a project might produce
significant impacts.

This language is also --

CHAIRMAN DAVIS: But there's no
substantial evidence.

MR. LYON: Well, we have competing
reports from experts. One says it will; another says
it won't. If there's a possibility that it might
produce a significant impact, you have a duty to
require an E.I.R.

CHAIRMAN DAVIS: If there is substantial
evidence.

MR. LYON: I also have -- I mirror the
commits about the due process issues that we've all
heard said also. I received notice of this hearing on
Tuesday. And the last meeting that was proposed by the
State Lands Commission, which was at an oil industry
conference in Ventura -- I got one day's notice of that. I don't think there really was any good faith negotiation on resolving this before today.

CHAIRMAN DAVIS: Okay. Thank you for your testimony.

MR. LYON: Thank you.

CHAIRMAN DAVIS: Finally, Mr. Ross, Gary Ross.

By the way, was the notice of this meeting -- how much notice did we give the public?

MR. HIGHT: Ten days pursuant to the open meeting act, and we gave ten days' notice.

CHAIRMAN DAVIS: Is that generally our practice?

MR. HIGHT: Yes.

MR. VALENTINE: We send a summary out, Mr. Chairman, ten days in advance at least. And if people want the text of the full calendar item and request it, then we fax it out to them immediately. It's true, as one of the speakers said, that some of the participants got the total calendar and the staff report on Tuesday. However, they requested it on Monday. So we responded as quickly as we could. We don't send the whole calendar item. It would cost thousands of dollars to send the --
CHAIRMAN DAVIS: We might, in the future, consider moving it to like 15 days or so.

CONTROLLER CONNELL: I think that would be appropriate, particularly if people have to travel and they want to bring constituent groups here. I mean, people work, and they have to arrange for time off. So I see no reason -- how much ahead of time do you set the calendar, Bob?

MR. HIGHT: Depending upon schedules, we sometimes a day or two before the -- we can certainly try to move that forward.

CONTROLLER CONNELL: I think, when we anticipate public interest in something and there's a potential for public testimony at the hearing, that would be good.

CHAIRMAN DAVIS: Let's -- do you have any objection to that?

MR. HIGHT: Part of this was -- the court reporter missed, and I think that -- well, we have a tape. So she can put that --

CHAIRMAN DAVIS: Well, let me just repeat it again. I suggested that we provide notice 15 days in advance of a hearing in the future to give people an opportunity to request a full text of the issues being discussed and an opportunity to decide whether or not
they want to come and testify. The previous speaker,
Mr. Lyon, made a good point in that regard.

MR. HIGHT: On this particular issue, the
minute that we get the request, we fax it out.

CHAIRMAN DAVIS: I have no doubt of that.
But someone could be gone for a couple of days.

MR. HIGHT: Sure.

CHAIRMAN DAVIS: And, you know, they may
not get --

CONTROLLER CONNELL: They have to arrange
their work schedule if they have to travel to the
meeting. It's good to do that.

MR. HIGHT: 15 days exceeds the legal
requirement set out in the Government Code. We'll be
happy to comply.

CONTROLLER CONNELL: Good.

CHAIRMAN DAVIS: Does anyone have any
objection?

CONTROLLER CONNELL: I move it.

CHAIRMAN DAVIS: Unanimously approved.

All right. Mr. Ross?

MR. ROSS: Yes. Thank you for having me
here. And, in fact -- but I do appreciate your coming
to Los Angeles instead of having me come up to
Sacramento.
CHAIRMAN DAVIS: Sure.

CONTROLLER CONNELL: We all appreciate staying in Los Angeles instead of going to Sacramento.

COMMISSIONER WADDELL: I wouldn't say "all."

CONTROLLER CONNELL: Those of us who are Southern California residents appreciate L.A., two out of three.

CHAIRMAN DAVIS: The board members, yes, but look at all of the staff.

CONTROLLER CONNELL: Two out of three would be great.

MR. ROSS: There's no football team down here, by the way. I'm a surfer also for 35 years, and I have a degree in marine science. I'm also a businessman. I'm an inventor, and actually I have a very successful company, and we pay a lot of California state tax.

And the reason we are -- I'm founder of the Coastal Preservation and Research Foundation. And I'll start off by saying that we also disagree with the Noble report. And I'm a little confused. But in my reading of that -- and I do have a letter to you, but it seems as though the conclusion was that the waves were considered to be
caused by the offshore effects, the island shadowing, and other factors as opposed to the inshore dynamics.

And am I wrong, Rea? Because I'm going to quote you, Rea. Rea quoted that there's no way of knowing what will happen on the inshore dynamics. I think one of our experts, Professor McLain, up there at U.C.S.B. -- his reaction to all of this is there's so many variables. When you eliminate some major variables, something is going to happen.

So I guess the best way I can attack the Noble report -- and maybe I'm inaccurate in this way -- but if you're saying there's going to be no change, that would have to be absolutely false because something will happen.

And the point of that -- and Rea talks about the fact that the short-period waves are the ones that caused the wave event in this area. And that's part of the value of this area is the wind swell, that eight-second interval.

And part of that dynamic is the fact that those waves see the inshore bathymetry, and the wave is formed as a result of the inshore bathymetry more than the offshore. The longer the period of the wave, the more the offshore topography, bathymetry, underwater topography is seen.
So we have the little pictures up there.

But what we have done in the green there is -- putting the light here, that little green area in the front side of that, as Glenn pointed out, is where the surfers take off, the wave (indicating). I'm not going to get into this because we've all talked about this. But I wanted to state our opinion.

I would like to make one point that I don't think has been made. Looking at the larger view of all of this, considerable revenues were pulled from the very area which benefitted the oil companies. And the State's mandated, of course, as we all know.

But realistically, the most active users of this area are the surfers. And I include that area that Glenn referred to, Stanley's. My biggest mistake of my life is, when I was 21, I didn't kick over at the surveyor states when they built the off-ramp there.

That was truly a world-class surf spot. Now, you can say that's Caltrans, you know. So if we go back to the forest instead of looking -- or at the trees instead of looking at the forest, let's face it. And I'm really -- our foundation -- I don't think we blame the oil companies on this. They're business people. I drive a car. They had a lease. They are following the lease.
In fact, we are in favor of the expedient removal of the piers, our foundation. And as you notice, everyone has a little bit different opinion around here. And also the surfers are all different just like everybody else. But I will agree with Reeve and some of the other speakers that we are a unique group and our perspectives are different.

And I will say that this area is important to surfers and, incidentally, a shell collector, whatever. But people drive a long way to go to that spot; so I think that's important.

I think what we are offering here is a unique window, an opportunity really, and a solution. Maybe that hopefully will be refreshing for everybody here. And my private company -- we have developed technology through a company that really competes with the company that's taking the piers down, Impact Marine. The company is Oceaneering Technologies. They are worldwide and world-known in the industry.

And we have developed an artificial surf reef. It's really an inshore shoaling device. And all the experts and experts from all over would agree that it should trap sand behind it and, more importantly, create a good surf wave.

Simply put, I think a reasonable idea
here -- why don't we, instead of arguing about what's going on and monitoring and all these other potential legal problems, maybe we put in some insurance that we put in a better wave. And I think that's our solution. We do something to make a better wave.

And no matter what happens down there, if you look at the picture, this is the area here that everyone's talking about, this little peak (indicating). Here's our proposed structure (indicating). And this particular sandbar, I would argue, has some dynamic to do with the pier. And if you look at the topography, you could say that.

Well, whatever happens over there, we can all watch that and learn from that. Our proposal is to put something over here (indicating).

Now, the unique feature of this proposed technology is removable. So we've had meetings with Commission staff members, Coastal Commission, even Army Corps. That's a good thing because it's a new technology, but we are prepared to actually build it, put it in the water, make a good surf wave.

And actually as far as permanent value, we would like to actually make this a short-term demonstration. Let's let everybody see what it does.

Meanwhile, we can see what really happens.
on either side. I think -- I would hope to believe that Surfrider and the other surfers would agree that that's a good idea. And maybe that would be our job. And we are a 501(c)(3).

I think another interesting aspect is Mobil actually was in favor, liked this idea. And I haven't met with Gary, but their problem -- and this is something else I may ask the Governor's Office -- is that they -- I would like to call their bluff. They would like to help me. But they said that, if they do, they have a liability problem because they were in the trail of this thing.

So, therefore, even though they'd like to help, they can't. So Glenn mentioned, yes, we have people in the community, other trusts or grants. There's all kinds of things we can look at with the 501(c)(3), no problem.

But as we all know too, permitting is going to be timely, and we are ready to take that on. And Ogden Environmental is our partner there. But we are ready to go for this. So we are hoping we can do it as a win-win and we get support from everybody.

So that's what I'm going to ask the Governor's Office, so is maybe help me find, if you agree that this is a good idea, and we could call it a
mitigation.

What do I want? I would say a mitigation
is support the funding of this public benefit project.
Funding will be needed for the permitting, one or more
offshore bathymetry studies, construction of reef,
installation, removal of reef, insurance, installation,
maintenance of abalone population, offshore kelp
monitoring, assessment of kelp beds, and possible kelp
restoration.

No one's mentioned the fact that that
used to be one of the most productive kelp beds in --
along the coast. And right now because of the warm
water and the heavy -- the surf events, the kelp has
gone down, but it is still there. We would like to
investigate that. We'd like to dovetail with other
environmental groups. One is the Channel Islands
Marine Resource Institute, and they are down in Port
Hueneme right now. And they want to dovetail with us
on part of that end of it as well as mariculture groups
in Goleta.

So we see this as an exciting, positive
thing. And part of it is some land-based improvements,
which are simple. I think we would like to take on the
more difficult, challenging task of the offshore reef.
This technology will be proven in Australia. And down
there we have the support from the community, every local person. So virtually everyone is in favor of that, and that's exciting for us.

So we'll be spending some efforts down there as well. But we would love to have this thrown in our own backyard. So thank you for your time.

Any questions?

CHAIRMAN DAVIS: No questions, no.

MR. ROSS: Okay.

MR. HIGHT: Mr. Chairman, if I might kind of summarize, I think perhaps where we are, to kind of crystallize it, as I see it, we have three competing, conflicting mitigation offers on the table for an issue that we do not believe mitigation is legally required for. And all of them involve in some fashion the payment of dollars. The payment of dollars is not a traditional mitigation measure.

Typically, when you're talking about mitigation, you're asking for a specific kind of item to be done, a certain amount of work, a certain public access, that kind of thing. So the Patagonia issue falls in a gray area about legal sufficiency.

The staff believes that, based upon the testimony we've heard today and all of the evidence that we've had up to now, that there still is not
significant evidence of a significant effect upon the environment.

The negative declaration done by staff, we believe, addressed adequately all of the issues involved and that the evidence that we've heard today is speculative, conjecture, and has no hard evidence value to it.

You clearly have the right, the ability, the authority to choose between conflicting public trust uses as the attorney general advised. And I guess, based upon those issues and if the staff has any other pieces that they want to put into this, we still believe that the negative declaration and the various mitigation aspects that have been attached to it are legal, valid, adequate to properly mitigate for this project.

CHAIRMAN DAVIS: Let me ask you this question. Clearly, I mean, everybody agrees that the piers should come down. I think the support is unanimous on the support for that although I have not talked to my other members but just listening to them ask questions. And the oil company is obligated to take it down. That's what our law says.

MR. HIGHT: Yeah.

CHAIRMAN DAVIS: So -- and I -- let me
speak for myself. I don't believe there is substantial
evidence of adverse impact, but there might be. I
mean, it seems to me the only way we can split the baby
is to approve the item before us and condition it in
some fashion that if, you know, the subsequent analysis
shows that wave conditions are adversely impacted, that
then there's some contingent liability.

I mean, it seems we have two choices: We
can accept the staff's report. I think we are on sound
ground for challenge. I don't think it will be
overturned. And whatever happens happens.

Or we can accept the report and devise
some mechanism that would allow us to determine whether
or not there is a substantial adverse impact. And that
could involve, you know, Mobil guaranteeing, you know,
to spend "X" amount of money if an impact -- if an
adverse impact actually occurs. Or there's a variety
of other ways it could go.

MR. HIGHT: The second part,
Mr. Chairman, would require some monitoring. And it is
questionable that the monitoring will show anything.
How long do you have to monitor for? You can get into
a real kind of nebulous area.

CONTROLLER CONNELL: I think there's even
a more -- recalling the testimony that was given today,
if, indeed, the peak wave period is from April through September -- one of you mentioned that? Yes. And we don't have any ground data which, I think, was one of the concerns here.

How do we test what happened before and after? If we are taking down the pier now -- and we all agree that we must take this pier down, hopefully immediately. If we take the pier down now, how do we know what the best surfing condition was prior to the removal of the pier?

Am I correct on this, Mr. Strange?

MR. STRANGE: Yes.

CONTROLLER CONNELL: That, therefore, going along with your idea, how would we know whether it's better or worse once we've taken it down? I guess I want to know how we get, a), the base information given the fact that this is evidently not the best season for surfing at that spot. And, secondarily, how would we evaluate it moving forward?

MR. HIGHT: The only way to get the base data is don't take the pier down.

CONTROLLER CONNELL: Well, we have to take the pier down.

MR. HIGHT: Yeah. And I think that once you take the pier down --
CONTROLLER CONNELL: Members of the audience here, you see what my point is here?

MR. WOOLPERT: Definitely. I'm sorry. Reeve Woolpert again. I'm sorry I wasn't more clear on that. I believe and there's precedence for a study that would be sort of a hind cast where we survey users of the area.

We could alter the model for doing that. We could question the survey users of the area and establish, by way of that study, what the baseline condition is. That's not preferable to waiting and doing a baseline study prior to project change. We don't have a choice, but we can do that. And it's been done. So we can establish what the baseline condition is.

CONTROLLER CONNELL: So you would be doing only a user reaction. I mean, my memory of my best snow conditions, using snow again, is always better than the snow conditions that probably existed, you know. And I can remember the best powder snow back to 1982, you know, when I was skiing. But I'm not so sure that memory helps us here.

MR. WOOLPERT: That -- the failure of memory or enhancement of memory can be dampened out of the survey if the survey's designed properly.
CONTROLLER CONNELL: You're shaking your head, Mr. Strange.

MR. STRANGE: I'll let Reeve talk.

CHAIRMAN DAVIS: Let me just ask the staff a question, if I may. I want to make this clear.

Mobil put the pier out to drill oil, did it pursuant to a lease. It made money for itself and for the state. It's taking down the pier as it's obligated to do. It's spending more money than it has to to enhance beach access and improve air quality. Some of that was the result of discussions with some of the opponents. So they are doing good things.

And I'd be happy to vote for this thing, and whatever happens happens. In the best of all worlds, if there was a way in which something terrible happened, I wouldn't feel good about it. It may not be possible to find a way to accommodate that eventuality if it occurred, but I'm just throwing it out at the staff for your thought.

MR. HIGHT: Yeah, we have struggled with that, and we can't find a clean way to accommodate that.

CHAIRMAN DAVIS: Commissioner?

I just want to address these things.

COMMISSIONER WADDELL: As I understand
the state of the information before us, if the pier comes down and we get a big winter storm through there that changes the ocean bottom and the waves are different next year, we are not going to know that the pier had a darn thing to do with that. Right?

MR. HIGHT: That's correct. And that's the reason for our hesitancy, Mr. Chairman.

AUDIENCE MEMBER: May I address that very issue? We --

CHAIRMAN DAVIS: Please. We let everyone talk. I'm trying to talk now, and I'm trying to get some information from our staff.

So you're basically saying that -- well, what if there isn't a big storm?

MR. HIGHT: Well, the area changes, given just normal weather patterns -- and I don't think that we can say what happened last year is what's going to happen this year. I think all of the coast is in a state of flux, and there is no way to say what it's going to be next year. So you get into a real mystical area.

CHAIRMAN DAVIS: Nobody has any guidance on this one? You are basically just saying we have enough evidence to vote to take the negative declaration, and that's it?
MR. VALENTINE: And we are also saying, Mr. Chairman, that, before we start sorting through whether money is an adequate mitigation measure or whether a surf reef would be an adequate mitigation measure, we have to tie mitigation to some demonstrated impact or, in this case, substantial evidence of the existence of significant impact.

And we don't believe that evidence exists despite our attempt by selecting a study -- a company to do a study, despite our attempt to find that evidence. A good shot has been given in determining whether or not the removal of the piers will have an impact on ridable surf. We concluded that there was no demonstrated impact.

And at this point, it's like trying to prove a negative. At what point do you say we have enough information?

The other thing I would like to mention is this issue of looking at it from April to September or whatever the peak use was. That's a question of use. It's not a question of what's causing the wave.

The issue of what's causing the wave is the environmental question that's before us, not whether or not people use it. Of course, they use it.
Or not whether they start their ride at one point or another point. Of course, they are using the pier as the locus for the beginning of their ride because it's a landmark.

That doesn't mean that the pier is causing the wave. And we don't believe that there is substantial evidence upon which to require Mobil to pay money or to do other mitigation measures other than those that we addressed earlier.

CHAIRMAN DAVIS: All right. I'll give you one last minute to whoever wants to close it.

MR. HENING: Surfers aren't stupid. They don't need landmarks to figure out where to surf. They surf where the waves are good, number one.

Number two, extensive documentation of this site as a quality surf spot exists in the form of several surfing videos. There's three of them on the market right now. Each one of them has 10- to 15-minute segments of professional surfers riding this wave. There is plenty of documentation. There is plenty of still footage describing the quality of the surf at this site prior to the Moore study.

So there would be no problem in producing significant data as baseline information for the quality of the surf spot. And I actually got my April
through September information from Mr. Moore's report because that is when he says the best wind swells are breaking there.

So we have baseline data, and it would be perfectly appropriate to use that baseline data against future data that we could acquire through a study, and then decisions could be made.

But there's plenty of information supporting the fact that this is a quality surf spot, and most of it is on video. A lot of it is still footage. And, of course, there's the anecdotal stuff from the surfers. Thank you.

CHAIRMAN DAVIS: The controller would like Mr. Strange to come to the microphone so she could pose a couple of questions to him.

CONTROLLER CONNELL: Mr. Strange, we had your testimony at the very beginning of the session, and we now have the benefit of listening to almost two hours, I guess, of discussion.

You've heard a lot of suggestions here. Has that changed your original discussion with this board?

MR. STRANGE: Not at all. We did a lot of work on this project. And everything we did was state-of-the-art, absolutely state-of-the-art. Nobody
has come up with any kind of a suggestion as to what could cause a sandbar out there based upon the action of the pier. And there are a lot of other piers around here.

And, frankly, let's look at Huntington, for example. There's a good one right there. I think the surf spot there is well removed from the pier. It's not out off the ends of the pier. There's all kinds of places that, as I understand it, people wouldn't surf around piers because it does not enhance the wave action. Hueneme is one. They are everywhere.

But we worked hard on this, and we did everything possible within the state of the art. Nobody has come up with anything, any kind of a physical mechanism, that would tell me, "Look. You didn't do it this way. This is state-of-the-art." Nobody has said that. And I do not possibly understand what mechanism could be causing this sandbar. And --

CHAIRMAN DAVIS: Let me ask you this question, if I may: Do you believe the fact that this study was taken during the off-peak periods caused it to be flawed? In other words, could you observe, in a period when the waves were less robust than other times, what, if any, impact on those waves the piers were having?
MR. STRANGE: No. We look at the wave climate as a whole. We took all seasons into account. The observational data that have gone into the report, I grant you, was based not on -- I mean, the few observations that we took weren't taken during that time frame as I recall. They were taken during the winter.

But I'm very familiar with the waves around here, and I know very well that wind swells, indeed, do peak during that time of the year. We didn't take physical observations, go out and look at the pier during that. But we -- into our study, we took into account all seasons of the year, all different wave spectrum as they would impact that area.

CONTROLLER CONNELL: Mr. Strange, now, when you hear the discussion that we've had before the Commission today, you haven't in any way changed your view that we cannot say that, if we remove the piers, that we are going to lose the potential of what adds value to this particular part of the beach? We don't know that for certain? Is that what you're saying?

MR. STRANGE: That's right. I'm saying that I feel strongly that it would not -- taking the piers out would not impact that surf spot.

CONTROLLER CONNELL: In and of itself?
MR. STRANGE: Yes.

CONTROLLER CONNELL: There are variables because we don't know what's going to happen with El Nino or other dynamics?

MR. STRANGE: That's right. And you could change that this year, and it might never come back. And it might not be due to taking down the pier at all. Where I swim, there is a marvelous little peak in a wave back in the '60s and '70s. After the winter of 1980, '79-80, the swell of February of 1980, that disappeared. And it's never been there again. And there's nothing to say that couldn't happen this time.

CHAIRMAN DAVIS: Okay. Well, we've taken a lot of time on this issue. And it's not inconsequential. You know, it's my own view that, in the best of all worlds, I would prefer some mechanism that would allow us to determine whether or not the judgment we are going to make today was accurate and to correct it if it's not.

But having said that, it doesn't seem fair to penalize Mobil because they are just doing what they are required to do by law. And if, in fact, their pier did create -- did enhance the surfing opportunities, that was like an incidental benefit. It was not put in for that purpose.
So I can't see how they -- even though they are convenient deep pockets, it doesn't seem fair to say, "Well, you created this incidental benefit. Now you're taking it away. So somehow you should pay for a way in which we can re-create that environment."

It does seem pretty clear to me that there is no substantial evidence that the wave conditions will change based on the disappearance of the pier.

So I'm prepared to do one of two things: I'll either be prepared to support some effort to -- I'm prepared to just accept the committee's -- the staff's recommendation, or I'll be prepared to support some reasonable effort at establishing a vehicle which would allow us to determine whether or not there's been significant wave change by virtue of the pier taken down once it is, in fact, taken down.

CONTROLLER CONNELL: You know, I guess I would like to try a variation of that, Mr. Chairman.

If our objective here is twofold, to take down the pier and then to try to make sure that there is still a good surfing condition on this particular stretch of the beach, is there a vehicle by which a group would eventually come back before this group to ask for permission to set up an artificial surf...
environment?

I mean, I'm not familiar with -- what is the planning permit process required there?

MR. HIGHT: That --

CONTROLLER CONNELL: Is there a way we could maybe expedite that if, at some point in the future -- I was thinking, Gray, that, at some point in the future, choose to be -- or there appears to be a need to augment what is already there naturally?

Is there a way we could expedite that, assist a 501(c)(3) to move forward in that regard?

MR. HIGHT: Well, we can certainly -- "expedite" it is a little strong. But we can certainly help in that process. It requires a myriad of permits, Coastal Commission, Department of Fish and Game, Corps of Engineers, County. And we've spoken briefly to some of those agencies. And at the moment, they are not terribly enamored with the concept.

But I think that, if the group were to come forward with a plan, then we would be certainly happy to expedite the meetings with all of those respective agencies, make sure that all the views were adequately addressed, to see that -- if that thing was possible.

CONTROLLER CONNELL: The reason I'm
suggesting this, Mr. Chair, is because -- and I guess we could sit here and debate forever the academic evidence as to whether or not the condition of the surf is better or worse after removal of the piers. And I don't think anyone will ever be certain what that information shows.

But if our intent here in California is to make sure we maintain and preserve surfing as one of the recreational uses, which I think we should try to do, then I would like to step forward and suggest that we instruct our staff to serve as an ombudsman in the future should a group come before us and request support for putting some type of additional surfing mechanism, support, whatever the terminology is for these various technologies that are available now, because I think that would get to the bottom line here.

The bottom line is are we going to have better surfing two years from today than we did today? And if that is our intent, how do we get there? We are not going to get there by setting up a research and monitoring system and debating about that. What we are going to have to do is figure out, if the surf is not adequate and people come forward, can we help them in reaching their objective.

Now, I don't know what that entails,
Mr. Chair, and maybe the staff would have to respond.

MR. HIGHT: Well, what that would have to entail is Mr. Ross's office or some other group coming forward with a concept plan. You know, we would shop it with the other agencies, do the necessary environmental work that would have to be done, and go through the permit process.

I mean, as you said, we'd be happy to work as an ombudsman, as a facilitator, with the other agencies. And I have to be honest. It's something that is new, and in California I don't think it's been done before. So it's going to be a matter of first impression. But we are happy to work diligently on that concept.

CONTROLLER CONNELL: Well, I don't really feel that Mobil should have to be responsible for what's happening here. I mean, in putting on my private sector hat, I think Mobil's responsibility is to take down the pier and to do so quickly. I mean, I don't want to have any excuses for why this pier isn't down from Mobil.

So let me clarify my own personal view here. I want this pier down. I want it down in an expedited fashion. And I don't want to hear any excuses. If you have to work crews 24 hours a day, 7
days a week, I want this pier down, and I want it down as quickly as we can because I'm very concerned that we don't know when the event of El Nino or the severity of that might occur.

But having said that, taking Mobil out of the situation, if our intent is to take what is clearly a valued part of the beach and make it available for recreational uses, I don't have a problem trying to use the staff of this commission to serve in a public purpose fashion because you have credibility, Bob, and your staff has credibility. And we've got an array of tremendous resources here.

I might just add to the public that I sit on over fifty-some boards and commissions, and the staff on this board is just extraordinarily supportive of, I think, the public access to beach and the intent of preserving that.

And I would just like to see, if you couldn't serve in a more aggressive fashion, to assist if someone comes forward. I'm not suggesting you go out there and advocate that a group come forward.

What I'm suggesting is that, if a group determines, following the removal of the pier, that they are -- feel that they could get a heightened use of the beach by using some form of technology, whatever
that might be, that we might be able to use our
resources to assist them in what is truly a gruesome
permitting process.

MR. HIGHT: It's not fun.

CONTROLLER CONNELL: As we all know as
members of this commission. And if that would be
helpful to a group -- you know, a community group, a
501(c)(3) -- then I would certainly want to include
that as part of our action today, Mr. Chair, if I can
get a second.

CHAIRMAN DAVIES: Well, I think that makes
sense as the least we can do. And I think we should do
it. And I -- if some terrible event happens, I'll be
happy to call Mobil and at least put in a good word.
Maybe they'll kick in a couple of bucks or something.
But all we can do is act on the evidence in front of
us.

And I assume the attorney general
recommends approval of this item?

MR. EAGAN: Yes.

CHAIRMAN DAVIES: Do you have any
comments, Mr. Waddell?

COMMISSIONER WADDELL: No, I do not.

CHAIRMAN DAVIES: Then we'll consider the
controller's motion to amend the staff report to
include the staff's willingness to act as an ombudsman and to help shepherd and guide people who might want to decide to introduce technology to improve the surfing conditions, if they are, you know, materially diminished by virtue of taking down the pier.

All right?

MR. HIGHT: Okay.

CHAIRMAN DAVIS: So do we have a second for the motion?

COMMISSIONER WADDELL: Second.

CHAIRMAN DAVIS: All right. That's all in favor?

CONTROLLER CONNELL: Yes.

CHAIRMAN DAVIS: It's unanimously approved.

I want to thank everyone for their testimony. I know this is a difficult issue. Not everyone is happy with it. But we did the best we can with the evidence ahead of us right now, in front of us right now. And if, in fact, people's worst fears come to pass, I will assure you that we will, our staff would work its tail off to try and remedy the conditions.

With that, is there any further --
MR. HIGHT: There's no further business.

CHAIRMAN DAVIS: All right. With that, the meeting stands adjourned.

(Thereupon the State Lands Commission meeting adjourned at 12:30 p.m.)
I, Marcy Knobel, CSR 11234, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing proceeding was taken down by me in shorthand at the time and place named therein and was thereafter reduced to typewriting under my supervision; that this transcript is a true record of the testimony given by the witnesses and contains a full, true, and correct record of the proceedings which took place at the time and place set forth in the caption hereto as shown by my original stenographic notes.

I further certify that I have no interest in the event of the action.

EXECUTED this 13th day of NOVEMBER, 1997.

Marcy Knobel, CSR #11234