

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

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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.

1 CONTROLLER CONNELL: Do I have a motion
2 to approve the consent calendar?

3 COMMISSIONER WADDELL: I'll move the
4 consent calendar.

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

8 And we will now move onto the regular
9 calendar.

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

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

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

17 COMMISSIONER WADDELL: Approve the
18 minutes.

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

21 MR. HIGHT: Okay.

22 CONTROLLER CONNELL: Mr. Hight.

23 MR. HIGHT: Item 69, Madam Chairman and
24 Commission Members, is the request by Mobil Oil
25 Corporation for the removal of a pier known in various

1 contacts as the oil piers or the Mobil Pier or the
2 Ferguson Pier.

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

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

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

15 CONTROLLER CONNELL: Thank you.

16 Mr. Valentine.

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

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

23 MR. VALENTINE: Is this better?

24 CONTROLLER CONNELL: Yes.

25 Can everyone hear him? I see people

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

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

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

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

12 MR. VALENTINE: Okay.

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

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

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

22 Gray, I'm happy to see the chair of this
23 commission. We just went through the consent items,
24 and we just approved the minutes, Gray. And we are now
25 just beginning our discussion of the item that is

1 before the Commission today, the Mobil Oil request for
2 removal.

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

5 CONTROLLER CONNELL: Yes, you've been
6 recorded.

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

9 CONTROLLER CONNELL: Yes.

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

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

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

25 The policy reasons which we believe

1 support removal of the pier is in no particular order:
2 one, their advanced age. They were constructed in the
3 '30s as I mentioned. Two, the public health and safety
4 aspects of leaving old and noneconomic oil piers in
5 their place is not good.

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

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

14 We are informed that annual maintenance
15 costs on these piers is approximately a floor of
16 \$250,000 per year and up from there if the piers were
17 to be left in place. Obviously, Mobil is trying to get
18 out from under that cost, and somebody else would have
19 to assume it not to mention the liability concerns that
20 go along with these piers and the management
21 responsibilities.

22 Finally, and perhaps more -- most
23 important, we believe that the public benefits
24 associated with beach restoration and demolition of
25 these piers and the increase in access in use of the

1 beach greatly outweighs any good that these piers
2 currently do for the public.

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

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

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

21 Second, there will be temporary impacts,
22 at the very least, on public access because parts of
23 the beach will have to be closed. Mobil has agreed
24 with staff on a comprehensive, we believe, public
25 access package to open up to access areas most in the

1 north and south of the beach that have been not
2 physically used in the past due to physical constraints
3 on their use.

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

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

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

25 My estimate is that there's about 500

1 feet of new fill, which those figures demonstrate,
2 maybe 300 to 500 depending on where you're looking at,
3 but a lot of new fill out into the ocean at that time.

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

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

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

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

24 CONTROLLER CONNELL: For other classes of
25 use?

1 MR. VALENTINE: Exactly.

2 CHAIRMAN DAVIS: Other classes of use,
3 yeah.

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

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

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

25 And we would ask that the conditions that

1 I have alluded to be made part of that permit,
2 including an air offset package as is described or
3 outlined in the Mitigation Monitoring Plan attached to
4 the calendar item. The beach access improvement
5 package that I -- and the beach improvement package
6 that I mentioned.

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

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

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

23 CONTROLLER CONNELL: Mr. Chair, I think
24 it would be helpful, before we have any public
25 response, to hear from the consultant who did this

1 study, \$40,000 study, because, as I read at least, the
2 concerns that were evidenced in the communication for
3 Patagonia to the Commission -- they seemed to be
4 arguing about the quality of the surf there and whether
5 the quality of the surf is going to be in any way
6 negatively impacted. And I would like to hear the
7 results of the consultant's study.

8 Is the consultant available?

9 MR. HIGHT: Yes.

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

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

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

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

23 MR. MOORE: I am a bodysurfer. And let
24 me, if I may, Mr. Chairman and Members of the
25 Commission, my name is Jon Moore. I am a coastal

1 engineer having practiced for over 25 years in
2 California, educated at the University of California
3 Berkeley in coastal engineering.

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

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

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

22 We have performed coastal analyses and
23 design for the U.S. Navy; various municipalities;
24 cities of Oxnard, Ventura; county of Ventura; and so
25 on; and as well as many private entities. So our

1 experience -- my personal experience runs the whole
2 gamut from design, planning, environmental impact
3 analysis, and the like.

4 If you'd like, I can very briefly go into
5 the methodology or the analysis that we did.

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

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

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

22 So it is a collaborative effort, if you
23 will, between the technical physics, the hydrodynamics,
24 the coastal processes of the site, the wave physics,
25 which is very unique to Santa Barbara Channel, which

1 Mr. Strange is well recognized for. And that forms
2 the -- well, was drawn upon heavily.

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

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

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

17 MR. MOORE: Yes. The issue that is
18 before you and that has been in discussion is whether
19 or not the piers themselves are responsible for wave
20 quality being better for surfers and if, in fact, the
21 piers, by their removal, would result in the waves
22 being lowered or being diminished in quality to the
23 point where, in the surfers' opinion, the site no
24 longer would have the value that they are indicating
25 that it has.

1 CONTROLLER CONNELL: How would you rate
2 this portion of the beach? I mean, is this like a
3 budding slope, or is this an intermediate, a double
4 diamond? I mean, I'm a skier, not a surfer. I mean,
5 how do you gauge the quality of the surfing at this
6 point versus -- is it Rincon that part of the beach
7 further up the coast which the surfers generally like?

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

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

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

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

25 It's primarily -- where it is

1 distinguished among other spots in Southern California
2 is the fact that it is known as a wind swell site. And
3 by that, I mean that the prevailing winds, which
4 generally occur in the outer waters of Santa Barbara
5 Channel and offshore Pt. Concepcion, create the waves
6 day in and day out in Santa Barbara Channel.

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

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

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

20 MR. MOORE: In our view, the wave
21 conditions at this site are not governed by the piers.
22 They are governed by the coastal dynamics. They are
23 governed by what Mother Nature will do to the shifting
24 sands. Sand moves inshore. It moves offshore. It is
25 constantly moving down coast. We have stormy winters.

1 We have calm winters. And it's well known that beaches
2 do change.

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

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

14 All of that goes to determine whether or
15 not a bar will be present, whether a bar will not be
16 present, whether one year will be more favorable for
17 surfing at that spot, or whether, because of the
18 physics, there may not be very good waves at that spot.

19 So there is no guarantee in our view.

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

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

1 conditions if that was to occur?

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

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

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

16 MR. MOORE: Yes, ma'am.

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

21 MR. MOORE: Well, there may be other
22 people here present in the audience, sir, who can best
23 answer that than myself. But let me just say, from my
24 limited observation of the structure itself, that it's
25 in very poor condition and that I don't -- I don't

1 believe that -- and given the potential for this El
2 Nino winter, which is upon us and has been well
3 publicized -- but that notwithstanding, I don't think
4 that that structure has much remaining life to it.

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

10 CHAIRMAN DAVIS: Thank you very much.

11 MR. MOORE: Yes, sir.

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

14 MR. HIGHT: Yes.

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

22 And all we know is we had to examine this
23 issue as part of the permitting process. They were
24 hired. That's their report. And I really don't have
25 any more to add.

1 I will say, from a personal standpoint,
2 we are here trying to do everything we can to mitigate
3 and control things that we can control. And based on
4 his testimony, we cannot control the surf or the ocean.
5 The ocean is going to do what it wants to do.

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

10 So, Rea, would you like to say anything?

11 MR. STRANGE: May I?

12 MR. BROOKS: Okay.

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

15 MR. BROOKS: Go ahead.

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

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

22 MR. BROOKS: We discussed probably two or
23 three topics with them. One of their major concerns
24 was beach access. And I think, if you look at our
25 plan, we have done a lot of work to make sure that the

1 beach is closed a minimal amount of time as possible.

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

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

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

20 So that's -- that -- those issues on the
21 surf mitigation -- once we remove the pier, we would
22 support anything you all would want to do on your
23 business of getting your artificial reef, but we would
24 rather not have any part of that. That's not our
25 business.

1 CHAIRMAN DAVIS: Wasn't there also an
2 offer made to turn over the money --

3 MR. BROOKS: Yes.

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

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

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

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

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

20 MR. BROOKS: Yes, that's correct.

21 CHAIRMAN DAVIS: Which is roughly in that
22 neighborhood?

23 MR. HIGHT: Yes.

24 CHAIRMAN DAVIS: So you said, in effect,
25 "If you want to take responsibility for the pier, pay

1 for the maintenance and liability, we'll give you the
2 money that we would have spent to demolish the pier"?

3 MR. BROOKS: Correct.

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

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

10 CHAIRMAN DAVIS: Thank you.

11 CONTROLLER CONNELL: Mr. Chair?

12 Did you own the pier -- you must have in
13 1983?

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

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

20 MR. HIGHT: If you'll look at Photo Group
21 No. 2, it's pictures of what happened to the pier in
22 1983. And as you can see, large pieces from the middle
23 of the pier were --

24 CONTROLLER CONNELL: Missing.

25 MR. HIGHT: Yeah.

1 CONTROLLER CONNELL: Had you rebuilt the
2 pier at that point?

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

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

10 MR. BROOKS: Yes.

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

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

16 CONTROLLER CONNELL: Do you know that,
17 Bob?

18 MR. HIGHT: No, I don't.

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

21 CONTROLLER CONNELL: It looks pretty
22 devastated, the damage.

23 CHAIRMAN DAVIS: Thank you very much.

24 MR. BROOKS: Okay, thanks.

25 Rea?

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

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

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

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

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

22 But I can answer any questions perhaps
23 with respect to the wind and the wave climate. I think
24 the issue here is with respect to the real cause for
25 this peak in the waves just off that Spur Pier.

1 And it's generally conceded that the real
2 wave condition which makes this a good wave -- a good
3 wave, not an excellent wave, but a good wave --
4 sometimes the only real place one can find a halfway
5 decent wave is during times of a short-period swell.
6 Those waves are generated primarily just outside
7 Pt. Concepcion, a strong wind area out there.

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

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

22 We don't have any real ground truth as to
23 what's happened in the past. We don't know really what
24 happened to that shoal area in 1982-83. We don't know
25 what happened to it in '85-86, which was just about as

1 bad a year. And we've had some dandy storms in '88 and
2 '92, '93, and, of course, the one just a couple of
3 years ago.

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

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

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

20 Monitoring is going to do absolutely no
21 good whatsoever because we don't have any ground troops
22 out there. We haven't been measuring. And I dare say
23 we must have seen an enormous change in '82 and '83
24 after those waves hit. It came back, but it might have
25 come back just due to natural causes if, indeed, it is

1 a result of shoaling. If it's not a result of
2 shoaling -- in other words, refraction, diffraction --
3 it's going to be there no matter what.

4 CHAIRMAN DAVIS: Does anyone have any
5 questions?

6 CONTROLLER CONNELL: No, thank you.

7 CHAIRMAN DAVIS: All right. We took
8 approximately 25 minutes to hear from the proponents of
9 this project; so I'm going to allocate 25 minutes to
10 the -- to the opponents of which there are seven. So
11 let's see. That is roughly a little more than three
12 minutes a person. So you will try and abide by that
13 limitation.

14 We'll start off with Glenn Hening,
15 Coastal Preservation and Research Foundation.

16 MR. HENING: Good morning, Commissioners
17 and interested parties. My name is Glenn Hening. I am
18 representing the Coastal Preservation and Research
19 Foundation, the group that generated the vision that we
20 have for a surfing park at this site. As it turns out,
21 I am also the founder and chief adviser of the
22 Surfrider Foundation.

23 In this particular situation, the
24 Surfrider Foundation does support the establishment of
25 a research site, not an artificial reef, but a research

1 site for wave action.

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

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

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

21 We want to create kind of like a Little
22 League field that's also a place where benign marine
23 habitats can be explored. And we want to combine
24 science with stoke to create something that hasn't been
25 done before, a surfing park.

1 We feel that our data shows that there
2 are significant problems with Mr. Moore's report. When
3 I started the Surfrider Foundation, I was working at
4 the Jet Propulsion Lab in Pasadena. There, we would
5 speak of data granularity and data gaps.

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

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

18 Last weekend both parking lots were full,
19 and there were cars parked all the way up Bates Road on
20 both sides of the highway. People couldn't find a
21 place to park. Well, if you take -- it's our
22 contention that, without recognizing the value of the
23 surfing resource here, that 200 surfers that were using
24 this area next year won't have any place to go except
25 to add to the impact on Rincon.

1 Now, one of the reasons we are here is
2 because you can see how in 1971 the freeway was routed
3 around the oil fields (indicating). Basically, it was
4 a choice between put the freeway through the oil field
5 or put it in the ocean. Well, they put it in the
6 ocean.

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

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

24 So my position is that we are not
25 opposing the application per se. We think that the

1 application does have serious weaknesses. We think
2 there are significant flaws in Mr. Moore's findings.

3 And we think that -- given,
4 unfortunately, my lack of knowledge of the
5 discretionary powers of the Commission -- but we would
6 hope that the Commission would take into consideration
7 the idea of Mobil being required to participate in
8 maintaining this site as a quality surfing resource.

9 Can I answer any questions?

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

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

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

23 MR. HENING: I don't know. Somebody
24 said, "Well, you know, what's money to Mobil?" I don't
25 know what to ask. But the idea of about a half a

1 million dollars, we think, would be an appropriate
2 start towards what we would like to do.

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

7 MR. HENING: We would like Mobil to pay a
8 half million dollars into a fund controlled by the
9 Commission that our foundation would necessarily apply
10 for. We are not saying that we have all the answers,
11 but we think we've got the best solution for everybody.

12 We can make Mobil look good by their
13 underwriting the maintenance of the significant surfing
14 resource. We can make the beach look good. And we can
15 look towards maintaining good waves in the ocean
16 because, as I said, if Mr. Moore had been -- and he was
17 there on-site in December. He was on-site in January.
18 But he wasn't on-site when the surfers were riding the
19 good waves there April through September.

20 There's no user profiles. There is no
21 population studies. Basically, it was a broad rush
22 attempt to look at this place. But if you look at it
23 in detail and you look at it with the 30 years of
24 surfing experience that we have, you find that, yes, it
25 is a good wave; yes, surfers go there to ride that

1 wave. That wave is an important part of our surfing
2 resources, and we would like to see it maintained in
3 one way or another.

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

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

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

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

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

23 CHAIRMAN DAVIS: I don't think that's
24 quite fair. I think they -- certainly Mr. Strange
25 said -- and you can interpret Mr. Moore's comments in a

1 similar fashion -- nobody knows for sure, according to
2 them, what creates the favorable wave action in this
3 particular area. They can't find any evidence that
4 it's the pier. And they believe storms and weather are
5 more of a factor than the pier. But nobody knows for
6 sure. That's the sense I got.

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

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

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

23 CONTROLLER CONNELL: Well, are you
24 maintaining that the bottom features relate to the pier
25 in some fashion?

1 MR. HENING: Absolutely, absolutely.

2 CONTROLLER CONNELL: In what way?

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

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

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

22 But I know, in my 30 years of experience
23 surfing this area and especially, you know, dear
24 departed Stanley's, which was a really world-class
25 wave, I know that, when you go surfing here, you paddle

1 out off the end of the pier, and you sit next to the
2 pier (indicating).

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

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

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

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

1 surfers surf these two peaks off the spur (indicating).

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

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

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

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

22 CHAIRMAN DAVIS: Okay. Any other
23 questions?

24 (No response.)

25 CHAIRMAN DAVIS: Thank you very much.

1 MR. HENING: Your welcome.

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

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

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

10 MS. CRATCH: You're just taking
11 everybody?

12 CHAIRMAN DAVIS: Yes. You were next to
13 speak.

14 MS. CRATCH: Next? Great.

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

19 (No response.)

20 CHAIRMAN DAVIS: Okay. Please go ahead.

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

1 approve this negative declaration.

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

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

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

23 But I don't feel like the indications are
24 that the piers cause the surf. There haven't been any
25 strong indications that that is the case. And I don't

1 feel like Mobil should be held for ransom to fund a
2 surf research laboratory.

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

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

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

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

14 CHAIRMAN DAVIS: You live in the general
15 area?

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

18 CONTROLLER CONNELL: Thank you.

19 CHAIRMAN DAVIS: Thank you so much.

20 All right. The next speaker is
21 Mr. Brooks, Gary Brooks, of Dallas, Texas.

22 MR. BROOKS: I already spoke.

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

25 Can you help me with this?

1 CONTROLLER CONNELL: Oh, yeah. Rob
2 Holcombe. Yes, yes. That's exactly right.

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

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

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

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

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

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

23 (Copies handed to members.)

24 MR. HOLCOMBE: At this point, with you
25 having those, I was going to go to the second page,

1 which I just wanted to pull out as I was listening to a
2 lot of the conversation going down before I came up
3 here.

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

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

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

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

1 enhanced surfing... will be lost."

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

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

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

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

25 And the oil piers produces what I would

1 call at times it to be an absolutely perfect "A" plus
2 peak break, a wave that breaks both directions, right
3 and left.

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

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

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

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

22 "It is inadequate for all the reasons
23 stated in our prior comment letter and in the comments
24 of others, including the Environmental Offense Center
25 and the Surfrider Foundation. We hope that you

1 carefully review and consider all of those comments
2 before making the decision to go forward with this
3 project.

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

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

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

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

25 "Finally, please scrutinize carefully any

1 claim that citizens concerned with the environmental
2 protection are responsible for delaying this project.
3 If the legally required documents -- if the legally
4 required environmental documents had been prepared in
5 the first instance, as members of the public requested,
6 the process could have been concluded long ago.

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

12 "Thank you for your consideration, Yvon
13 Chouinard."

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

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

21 So this is not something Mobil is doing
22 just because they decided to do it. That's their
23 obligation. Our obligation is to make sure that that's
24 done in an environmentally responsible way, and that's
25 why we are having this hearing.

1 And, frankly, I think it would not be
2 wise of any of us to ignore the warnings of El Nino. I
3 think that's a legitimate consideration for all of us
4 to take into account.

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

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

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

13 MR. WOOLPERT: I can do that.

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

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

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

22 MS. SHAW: You should have a slip.

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

24 CHAIRMAN DAVIS: All right. Good. Well,
25 then, are there any -- any current questions?

1 CONTROLLER CONNELL: Yeah. I appreciate
2 your testimony. It was really helpful. I had a couple
3 of questions.

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

7 MR. HOLCOMBE: I would prefer that.

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

10 CHAIRMAN DAVIS: Thank you very much.

11 COMMISSIONER WADDELL: Thank you.

12 MR. HOLCOMBE: Thank you.

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

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

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

1 childhood.

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

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

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

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

22 In 1986 I was elected to the Board of
23 Directors of the Surfrider Foundation and served as a
24 board member until 1992. When I joined Surfrider in
25 1986, the organization had just over 400 members. At

1 about the time I left Surfrider, I was told it was over
2 20,000 members.

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

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

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

22 In addition, I have read about,
23 researched, talked to, or reviewed the accounts of
24 surfers surfing at nearly all of the surfing sites that
25 occur along the California coast.

1 A typical surfer in California relies
2 upon the limited combination of diverse and at times
3 widespread surfing sites. Most surfers travel among
4 these sites, evaluating their changeable qualities,
5 including the sites' carrying capacities, looking for a
6 suitable surfing conditions. Site surf-ability,
7 character, and quality varies dramatically from swell
8 to swell and from site to site and through the day and
9 throughout the season.

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

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

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

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

25 Number one, we are, I am, Patagonia is in

1 support of the decommission. There's no question about
2 that. It definitely will be an improvement in most
3 quarters.

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

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

18 But the point I'm trying to make is you
19 will benefit, the coast will benefit from greater input
20 from the public. We need an appropriate amount of
21 turnaround time, and we are concerned that we haven't
22 had that to give you comments on some rather
23 substantial changes to the project description, which,
24 in particular, are the changes to the public access
25 aspects of it.

1 For the first time on the way down, Rob
2 and I had a chance to stop by the piers and did look at
3 the northeast proposed pedestrian access, and we looked
4 at the south pedestrian access.

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

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

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

18 MR. WOOLPERT: Correct.

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

21 MR. WOOLPERT: Uh-huh.

22 CONTROLLER CONNELL: And what we are
23 trying to do at today's meeting here is determine,
24 given the fact that the piers have to come down, what
25 is an appropriate action for this commission to take in

1 terms of mitigation and monitoring of that section of
2 the beach?

3 Can you go through with us your thinking
4 from Patagonia in terms of why you felt this was a fair
5 and equitable proposal?

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

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

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

24 I used to surf at Rincon for about ten
25 years. I no longer can do it because I can't compete

1 in that atmosphere. I don't have the -- I'm not strong
2 enough. I'm not fast enough. And I just don't like it
3 anymore. It's a beautiful wave. It's a world-quality
4 wave as you all know, as Glenn mentioned. It's just
5 not the place for me. The oil piers is an appropriate
6 place because of my age. It's an appropriate place for
7 families.

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

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

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

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

1 communicative and understandable.

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

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

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

22 CONTROLLER CONNELL: What was that value?

23 MR. WOOLPERT: I went to the surf and
24 water park, and it's a model. It won't hold up in the
25 courts: But I looked at what a surfer would pay to go

1 to Raging Waters in San Dimas, which turned out to be
2 at the time about \$18 a day.

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

8 Once -- before I applied that, Chevron
9 had offered us \$5,000 as written with Surfrider. My
10 environmental director said it might be somewhere
11 around \$12,000. The Coastal Commission staff person
12 suggested about \$17,000. I went back to Chevron with a
13 \$30,000 offer. Before I read the reports and applied
14 my figure, went on vacation, applied my figure, turned
15 out to be about \$250,000 if you apply that \$18 per day
16 per surfer that lost surfing opportunity.

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

21 Now, in doing the valuing, you have to
22 have a baseline beginning. It's too late for that.
23 You know, a year or so ago, I think we had -- our first
24 opportunity was the first release of the -- for a
25 common period that we had the opportunity to begin such

1 an effort. It's too late now with El Nino, et cetera.

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

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

18 CONTROLLER CONNELL: What are you
19 suggesting?

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

24 CONTROLLER CONNELL: Once we take down
25 the pier?

1 MR. WOOLPERT: Absolutely. Therefore,
2 these arguments between the consultants now are drawn
3 to a conclusion. And I have a big question mark about
4 the benefits -- about the impacts of removing the
5 piers. I don't know for sure that's going to happen.
6 I bet it might. I might put ten bucks on it but not a
7 lot of money.

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

13 Mr. Davis?

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

23 Are we under some obligation as a
24 commission to require further study? Or can we
25 conclude that the total net impact to all users of

1 the -- of the area, you know, is enhanced or not
2 enhanced depending on how we calculate it?

3 MR. EAGAN: In other words, assuming --

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

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

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

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

25 CHAIRMAN DAVIS: But is it appropriate to

1 net out the opportunities?

2 MR. EAGAN: Yes.

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

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

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

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

22 MR. WOOLPERT: I make the comparison with
23 Chevron not for that purpose. I know those are
24 substantially different issues. What we are seeking
25 is -- we don't want to hinge -- for example, if we

1 assume the premises of Mobil and Noble that the waves
2 will persist, we are very concerned about beach
3 closure, any beach closure, that takes place and any
4 loss of surfing, not just long-term but short-term.

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

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

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

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

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

23 MR. VALENTINE: Mr. Chairman, excuse me,
24 if I may, sir. What the witness is talking about is
25 that, during the initial stages of demolition, this

1 beach (indicating) to the south of the main pier will
2 be closed for a period of two months based on the plan
3 that you have before you.

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

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

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

18 The other issue is the access plan. The
19 access plan does not provide any additional benefits to
20 surfing for those two or more months that we will not
21 have access. The access plan, which we haven't even
22 had a chance to completely evaluate, also proposes
23 that, after the south pier is removed and the fences --
24 and access is restored to the beach, that we can go out
25 and surf in this construction zone.

1 If, as you saw in those 1983 pictures of
2 El Nino, similar events occur, we are going to have to
3 breathe throughout that water. And surfers should not
4 be allowed back in the water. You should be concerned
5 about the safety.

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

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

17 CHAIRMAN DAVIS: Okay. Thank you very
18 much.

19 MR. WOOLPERT: Is there any more
20 questions?

21 CHAIRMAN DAVIS: No. Thank you.

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

24 CHAIRMAN DAVIS: Sure.

25 CONTROLLER CONNELL: I have a question,

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

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

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

20 I think the staff is on firm ground when
21 it says, "No, the Commission doesn't have to isolate on
22 one subset of recreational users and consider only
23 their needs and only benefits to them when assessing
24 from the standpoint of recreation generally what the
25 impacts of a particular proposed project are."

1 I think the staff is also quite right,
2 based on the evidence in front of the Commission,
3 saying that the net benefit here is clearly to the
4 good, on the plus side, in terms of recreational use
5 from a slightly more general -- beach recreational use
6 from a slightly more general perspective.

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

12 CONTROLLER CONNELL: Thank you.

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

15 Mr. Lyon, Roger Lyon?

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

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

25 First of all, why aren't there any

1 surfers testifying in support of this? It's because
2 there is a wave at the oil piers. And if you go to the
3 site, you'll see that it looks like the oil piers are
4 creating the surf spot. And as a result, if you take
5 them out, there's a good chance for a fair argument
6 that there will be a detrimental impact on recreational
7 opportunities.

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

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

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

25 CHAIRMAN DAVIS: Again, in fairness, the

1 applicant always pays for the cost of an environmental
2 impact report.

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

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

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

21 Okay. There's no problem with access
22 there today. Pull up, park right there, go down to the
23 beach. They talk about enhanced access. They are
24 talking about opening up a couple of access sites that
25 are open already, but they are talking about improving

1 them. Okay? So when they talk about a net improvement
2 in recreational opportunities here, I don't think
3 there's really much of a net improvement here.

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

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

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

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

20 MR. LYON: Actually, you could. You
21 could. You could swim here. Okay. This is your
22 access route right here (indicating). The jet
23 skiers -- they drive down here (indicating). They drop
24 their jet skis down here (indicating), and then they go
25 out here (indicating). This area here is pretty good

1 for swimming (indicating). See all the sand here
2 (indicating)? Okay? This area is good for swimming.

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

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

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

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

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

1 classes of skiers --

2 MR. LYON: Skiers and snow boarders.

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

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

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

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

25 MR. LYON: I am minimizing it because --

1 what I would advise you is to go to the site and look
2 at it and see because, if you go there and you go to
3 the other beaches near there, you'll see that there are
4 other beaches that are better suited for swimmers.
5 This beach is particularly well-suited for surfers.
6 That's its primary use right now.

7 I mean, forget the reports. Go look at
8 the site. I mean, that's the only way. And to get a
9 good perspective from the surfers' point of view, you
10 have to go there on a day when the surf is good too. I
11 mean, that's the only way to get a real feel for what
12 this spot is about.

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

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

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

22 Now, I don't hear you offering the
23 slightest suggestion here in your testimony, unlike
24 others, as to what you want to see this commission do
25 when we take the pier down. What are you suggesting?

1 MR. LYON: Actually, what the Surfrider's
2 position is -- and I hadn't even gotten to the
3 substance of my comments. But the Surfrider's position
4 is that you have a duty to either require mitigation or
5 to -- excuse me -- identify mitigation or require an
6 environmental impact report. We are in favor of an
7 environmental impact report.

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

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

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

24 And they've been using it for decades,
25 making all this money off of it. And I think that

1 money is, of course, going to be -- it's always going
2 to be the best means of mitigation. Now, what is done
3 with that money, you know, the C.P.R. Foundation is a
4 good -- that would be a well worthwhile charity that
5 could use the money.

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

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

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

24 MR. LYON: Well, I disagree because I
25 think --

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

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

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

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

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

24 First, a leading agency determines
25 whether a project is exempt from the statute or is

1 certain not to cause significant impacts on the
2 environment.

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

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

11 This language is also --

12 CHAIRMAN DAVIS: But there's no
13 substantial evidence.

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

19 CHAIRMAN DAVIS: If there is substantial
20 evidence.

21 MR. LYON: I also have -- I mirror the
22 concerns about the due process issues that we've all
23 heard said also. I received notice of this hearing on
24 Tuesday. And the last meeting that was proposed by the
25 State Lands Commission, which was at an oil industry

1 conference in Ventura -- I got one day's notice of
2 that. I don't think there really was any good faith
3 negotiation on resolving this before today.

4 CHAIRMAN DAVIS: Okay. Thank you for
5 your testimony.

6 MR. LYON: Thank you.

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

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

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

13 CHAIRMAN DAVIS: Is that generally our
14 practice?

15 MR. HIGHT: Yes.

16 MR. VALENTINE: We send a summary out,
17 Mr. Chairman, ten days in advance at least. And if
18 people want the text of the full calendar item and
19 request it, then we fax it out to them immediately.

20 It's true, as one of the speakers said,
21 that some of the participants got the total calendar
22 and the staff report on Tuesday. However, they
23 requested it on Monday. So we responded as quickly as
24 we could. We don't send the whole calendar item. It
25 would cost thousands of dollars to send the --

1 CHAIRMAN DAVIS: We might, in the future,
2 consider moving it to like 15 days or so.

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

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

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

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

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

21 CHAIRMAN DAVIS: Well, let me just repeat
22 it again. I suggested that we provide notice 15 days
23 in advance of a hearing in the future to give people an
24 opportunity to request a full text of the issues being
25 discussed and an opportunity to decide whether or not

1 they want to come and testify. The previous speaker,
2 Mr. Lyon, made a good point in that regard.

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

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

7 MR. HIGHT: Sure.

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

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

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

16 CONTROLLER CONNELL: Good.

17 CHAIRMAN DAVIS: Does anyone have any
18 objection?

19 CONTROLLER CONNELL: I move it.

20 CHAIRMAN DAVIS: Unanimously approved.

21 All right. Mr. Ross?

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

1 CHAIRMAN DAVIS: Sure.

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

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

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

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

11 CONTROLLER CONNELL: Two out of three
12 would be great.

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

19 And the reason we are -- I'm founder of
20 the Coastal Preservation and Research Foundation. And
21 I'll start off by saying that we also disagree with the
22 Noble report. And I'm a little confused.

23 But in my reading of that -- and I do
24 have a letter to you, but it seems as though the
25 conclusion was that the waves were considered to be

1 caused by the offshore effects, the island shadowing,
2 and other factors as opposed to the inshore dynamics.

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

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

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

20 And part of that dynamic is the fact that
21 those waves see the inshore bathymetry, and the wave is
22 formed as a result of the inshore bathymetry more than
23 the offshore. The longer the period of the wave, the
24 more the offshore topography, bathymetry, underwater
25 topography is seen.

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

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

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

18 That was truly a world-class surf spot.
19 Now, you can say that's Caltrans, you know. So if we
20 go back to the forest instead of looking -- or at the
21 trees instead of looking at the forest, let's face it.
22 And I'm really -- our foundation -- I don't think we
23 blame the oil companies on this. They're business
24 people. I drive a car. They had a lease. They are
25 following the lease.

1 In fact, we are in favor of the expedient
2 removal of the piers, our foundation. And as you
3 notice, everyone has a little bit different opinion
4 around here. And also the surfers are all different
5 just like everybody else. But I will agree with Reeve
6 and some of the other speakers that we are a unique
7 group and our perspectives are different.

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

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

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

25 Simply put, I think a reasonable idea

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

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

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

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

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

25 Meanwhile, we can see what really happens

1 on either side. I think -- I would hope to believe
2 that Surf rider and the other surfers would agree that
3 that's a good idea. And maybe that would be our job.
4 And we are a 501(c)(3).

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

13 So, therefore, even though they'd like to
14 help, they can't. So Glenn mentioned, yes, we have
15 people in the community, other trusts or grants.
16 There's all kinds of things we can look at with the
17 501(c)(3), no problem.

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

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

1 mitigation.

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

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

21 So we see this as an exciting, positive
22 thing. And part of it is some land-based improvements,
23 which are simple. I think we would like to take on the
24 more difficult, challenging task of the offshore reef.
25 This technology will be proven in Australia. And down

1 there we have the support from the community, every
2 local person. So virtually everyone is in favor of
3 that, and that's exciting for us.

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

7 Any questions?

8 CHAIRMAN DAVIS: No questions, no.

9 MR. ROSS: Okay.

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

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

23 The staff believes that, based upon the
24 testimony we've heard today and all of the evidence
25 that we've had up to now, that there still is not

1 significant evidence of a significant effect upon the
2 environment.

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

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

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

24 MR. HIGHT: Yeah.

25 CHAIRMAN DAVIS: So -- and I -- let me

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

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

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

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

24 CONTROLLER CONNELL: I think there's even
25 a more -- recalling the testimony that was given today,

1 if, indeed, the peak wave period is from April through
2 September -- one of you mentioned that? Yes. And we
3 don't have any ground data which, I think, was one of
4 the concerns here.

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

11 Am I correct on this, Mr. Strange?

12 MR. STRANGE: Yes.

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

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

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

24 MR. HIGHT: Yeah. And I think that once
25 you take the pier down --

1 CONTROLLER CONNELL: Members of the
2 audience here, you see what my point is here?

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

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

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

23 MR. WOOLPERT: That -- the failure of
24 memory or enhancement of memory can be dampened out of
25 the survey if the survey's designed properly.

1 CONTROLLER CONNELL: You're shaking your
2 head, Mr. Strange.

3 MR. STRANGE: I'll let Reeve talk.

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

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

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

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

23 CHAIRMAN DAVIS: Commissioner?

24 I just want to address these things.

25 COMMISSIONER WADDELL: As I understand

1 the state of the information before us, if the pier
2 comes down and we get a big winter storm through there
3 that changes the ocean bottom and the waves are
4 different next year, we are not going to know that the
5 pier had a darn thing to do with that. Right?

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

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

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

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

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

22 CHAIRMAN DAVIS: Nobody has any guidance
23 on this one? You are basically just saying we have
24 enough evidence to vote to take the negative
25 declaration, and that's it?

1 MR. HIGHT: Yes.

2 MR. VALENTINE: And we are also saying,
3 Mr. Chairman, that, before we start sorting through
4 whether money is an adequate mitigation measure or
5 whether a surf reef would be an adequate mitigation
6 measure, we have to tie mitigation to some demonstrated
7 impact or, in this case, substantial evidence of the
8 existence of significant impact.

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

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

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

23 The issue of what's causing the wave is
24 the environmental question that's before us, not
25 whether or not people use it. Of course, they use it.

1 Or not whether they start their ride at one point or
2 another point. Of course, they are using the pier as
3 the locus for the beginning of their ride because it's
4 a landmark.

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

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

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

15 Number two, extensive documentation of
16 this site as a quality surf spot exists in the form of
17 several surfing videos. There's three of them on the
18 market right now. Each one of them has 10- to
19 15-minute segments of professional surfers riding this
20 wave. There is plenty of documentation. There is
21 plenty of still footage describing the quality of the
22 surf at this site prior to the Moore study.

23 So there would be no problem in producing
24 significant data as baseline information for the
25 quality of the surf spot. And I actually got my April

1 through September information from Mr. Moore's report
2 because that is when he says the best wind swells are
3 breaking there.

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

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

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

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

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

23 MR. STRANGE: Not at all. We did a lot
24 of work on this project. And everything we did was
25 state-of-the-art, absolutely state-of-the-art. Nobody

1 has come up with any kind of a suggestion as to what
2 could cause a sandbar out there based upon the action
3 of the pier. And there are a lot of other piers around
4 here.

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

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

19 CHAIRMAN DAVIS: Let me ask you this
20 question, if I may: Do you believe the fact that this
21 study was taken during the off-peak periods caused it
22 to be flawed? In other words, could you observe, in a
23 period when the waves were less robust than other
24 times, what, if any, impact on those waves the piers
25 were having?

1 MR. STRANGE: No. We look at the wave
2 climate as a whole. We took all seasons into account.
3 The observational data that have gone into the report,
4 I grant you, was based not on -- I mean, the few
5 observations that we took weren't taken during that
6 time frame as I recall. They were taken during the
7 winter.

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

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

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

25 CONTROLLER CONNELL: In and of itself?

1 MR. STRANGE: Yes.

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

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

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

20 But having said that, it doesn't seem
21 fair to penalize Mobil because they are just doing what
22 they are required to do by law. And if, in fact, their
23 pier did create -- did enhance the surfing
24 opportunities, that was like an incidental benefit. It
25 was not put in for that purpose.

1 So I can't see how they -- even though
2 they are convenient deep pockets, it doesn't seem fair
3 to say, "Well, you created this incidental benefit.
4 Now you're taking it away. So somehow you should pay
5 for a way in which we can re-create that environment."

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

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

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

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

1 environment?

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

4 MR. HIGHT: That --

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

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

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

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

25 CONTROLLER CONNELL: The reason I'm

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

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

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

25 Now, I don't know what that entails,

1 Mr. Chair, and maybe the staff would have to respond.

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

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

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

22 So let me clarify my own personal view
23 here. I want this pier down. I want it down in an
24 expedited fashion. And I don't want to hear any
25 excuses. If you have to work crews 24 hours a day, 7

1 days a week, I want this pier down, and I want it down
2 as quickly as we can because I'm very concerned that we
3 don't know when the event of El Nino or the severity of
4 that might occur.

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

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

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

22 What I'm suggesting is that, if a group
23 determines, following the removal of the pier, that
24 they are -- feel that they could get a heightened use
25 of the beach by using some form of technology, whatever

1 that might be, that we might be able to use our
2 resources to assist them in what is truly a gruesome
3 permitting process.

4 MR. HIGHT: It's not fun.

5 CONTROLLER CONNELL: As we all know as
6 members of this commission. And if that would be
7 helpful to a group -- you know, a community group, a
8 501(c)(3) -- then I would certainly want to include
9 that as part of our action today, Mr. Chair, if I can
10 get a second.

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

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

20 MR. EAGAN: Yes.

21 CHAIRMAN DAVIS: Do you have any
22 comments, Mr. Waddell?

23 COMMISSIONER WADDELL: No, I do not.

24 CHAIRMAN DAVIS: Then we'll consider the
25 controller's motion to amend the staff report to

1 include the staff's willingness to act as an
2 ombudsman and to help shepherd and guide people who
3 might want to decide to introduce technology to
4 improve the surfing conditions, if they are, you
5 know, materially diminished by virtue of taking down
6 the pier.

7 All right?

8 MR. HIGHT: Okay.

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

11 COMMISSIONER WADDELL: Second.

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

14 CONTROLLER CONNELL: Yes.

15 CHAIRMAN DAVIS: It's unanimously
16 approved.

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

25 With that, is there any further --

1 MR. HIGHT: There's no further business.

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

4 (Thereupon the State Lands Commission
5 meeting adjourned at 12:30 p.m.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.

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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