January 27, 2000

TO: Commissioners and Interested Persons

FROM: Charles Damm, Senior Deputy Director
      Gary Timm, District Manager
      Barbara Carey, Coastal Program Analyst

SUBJECT: REVISED FINDINGS for Proposed Major Amendment 1-99 to the Pepperdine University Long Range Development Plan. For Public Hearing and Commission Action at the February 17, 2000 Commission Meeting

SUMMARY OF STAFF RECOMMENDATION ON REVISED FINDINGS

Staff recommends that the Commission adopt the following findings in support of the Commission’s action on October 12, 1999. The findings reflect the approval of Major Amendment 1-99 to the Pepperdine University Long Range Development Plan, as submitted.

Commissioners on the Prevailing Side: Allgood, Daniels, Dettloff, Flemming, Kruer, and McClain-Hill.

AMENDMENT SUMMARY

The University is proposing to amend the certified Pepperdine University Long Range Development Plan (LRDP) to make seven revisions to the approved 50.4-acre Upper Campus. These proposed changes are: 1) increase in grading to create roads/pads and to stabilize landslides from 3 million cubic yards to 4.5 million cubic yards within the same area of disturbance; 2) modifications to circulation system, including addition of loop road to meet fire access standards; 3) redesignation of a church facility to an academic support facility; 4) redesign of graduate complex structures within the same total square footage and in the same location; 5) redesign of student housing buildings with the same number of units and in the same location; 6) resiting of water tank; and 7) addition of recreational field and pools associated with approved housing.

STANDARD OF REVIEW

The standard of review for the proposed amendment to the certified LRDP, pursuant to §30605 and §30512(c) of the Coastal Act, is that the LRDP, as amended, meets the requirements of and is in conformance with the Chapter 3 policies of the Coastal Act.
PUBLIC PARTICIPATION

§30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LRDP. The University held a public hearing regarding the project and solicited comments from public agencies, organizations, and individuals. The hearing was duly noticed to the public consistent with §13552 and §13551 of the California Code of Regulations which require notice of availability of the draft LRDP amendment be made available six weeks prior to the Regent’s approval of the LRDP amendment. Notice of the subject amendment has been distributed to all known interested parties.

I. ACTION ON PEPPERDINE UNIVERSITY LRDP AMENDMENT 1-99

Following a public hearing, staff recommends the Commission adopt the following findings. The adopted resolution and Commissioners on the prevailing side are indicated below.

Approval of Amendment 1-99, as submitted.

On October 12, 1999, the Commission approved, by a vote of 6-2, the Pepperdine University Long Range Development Plan Amendment 1-99, as submitted.

Commissioners on the Prevailing Side

Allgood, Daniels, Dettloff, Flemming, Kruer, and McClain-Hill.

Resolution

The Commission hereby certifies the Pepperdine University Long Range Development Plan Amendment 1-99, as submitted, and adopts the findings stated below on the grounds that the amendment, and the LRDP as thereby amended, meets the requirements and conforms with the policies of Chapter 3 of the Coastal Act and approval of the amendment will not have significant environmental effects for which feasible mitigation measures have not been employed consistent with the California Environmental Quality Act.

II. FINDINGS.

A. Amendment Description

The University is proposing to amend the certified Pepperdine University Long Range Development Plan (LRDP) to make seven revisions to the approved 50.4-acre Upper Campus Development. The Upper Campus Development (UCD) area of Pepperdine University comprises 50.4-acres northwest of the 230-acre developed portion of the
campus. The 50.4-acre project site is in an essentially natural condition. The conditions on the site have not changed since the approval of the LRDP. The native plant communities found on the project site are primarily coastal sage scrub, valley needlegrass grassland, and mixed coastal sage scrub/grassland. There are several dirt fire roads which cross the area. Several intermittent stream courses cross the UCD site, primarily from northwest to southeast. One stream is designated as a blue-line stream on the United States Geologic Service (USGS) map for the area.

The proposed changes are: 1) increase in grading to create roads/pads and to stabilize landslides from 3 million cubic yards to 4.5 million cubic yards within the same area of disturbance; 2) modifications to circulation system, including addition of loop road to meet fire access standards; 3) redesignation of a church facility to a academic support facility; 4) redesign of graduate complex structures within the same total square footage and in the same location; 5) redesign of student housing buildings with the same number of units and in the same location; 6) resiting of water tank; and 7) addition of recreational field and pools associated with approved housing.

As described below, the Commission certified the Pepperdine University LRDP in 1989. The certified LRDP includes 3 million cu. yds. of grading for development of the Upper Campus Development (UCD), including landslide remediation. Subsequent to the LRDP certification, Los Angeles County informed the University that a secondary access road must be provided as part of the UCD project to provide emergency access. The University's geologic consultants undertook further investigations of the UCD site in 1993 to determine the feasibility of constructing this secondary access road. At that time a much deeper slide plane was identified. In order to stabilize the UCD site, the University now proposes a conceptual grading plan that represents an increase to 4.5 million cu. yds. of grading.

The LRDP, as proposed to be amended, would include the following development within the Upper Campus area:

- A 95,500 sq. ft. graduate complex including the graduate schools of business and management, public policy, and education and psychology;
- 104,000 sq. ft. of student housing (96 units);
- 100,800 sq. ft. of faculty/staff condominiums (48 units);
- 30,000 sq. ft. of faculty/staff homes (10 detached and duplex units)
- A 30,000 sq. ft. academic support facility;
- A 25,000 sq. ft. academic learning center;
• Ancillary facilities including potable water tank, reclaimed water tank, cooling plant, and 2 debris basins;

• Access roads, including a primary road 40 feet in width, a secondary road 26-30 feet wide, a 20-foot road to provide access to proposed water tanks and various other roads and driveways to provide access to the proposed residential uses; and

• 1,338 parking spaces.

The Upper Campus project would accommodate 468 new full-time equivalent (FTE) students.

The County of Los Angeles approved a conditional use permit, parking permit and oak tree permit for the UCD project in May 1999. The Upper Campus Development Final Environmental Impact Report (EIR), prepared by Envicom Corporation, was certified by Los Angeles County in February 1999.

The list of substantive file documents is attached as Attachment 1. Exhibit 1 is a Vicinity Map. The existing, developed campus area is shown in relation to the UCD site in Exhibit 2. Exhibit 3 is the detailed plan of the proposed UCD buildings and roads.

B. LRDP Background.

The Coastal Act (§30605) provides for the Long Range Development Plan (LRDP) process: "to promote greater efficiency for the planning of any...state university or college or private university development projects and as an alternative to project-by-project review..." After an LRDP has been certified, prior to commencement of development of the approved facilities, the University submits a notice of impending development to the Commission. The Commission's review of the NOID is limited to imposing conditions to ensure consistency with the LRDP. The Commission cannot deny the development described in the Notice of Impending Development. LRDPs may be amended if the amendment is certified by the Commission as consistent with Chapter 3 of the Coastal Act.

While LRDPs are processed and reviewed like local coastal programs, they operate more like coastal development permits. The Coastal Act sections providing for LRDPs are found in Chapter 7 regarding development controls and coastal development permits. (§§ 30605-30606.) Once LCPs are approved, local government and the Commission, on appeal, review proposed development on a project-by-project basis through coastal development permit applications. In contrast, LRDPs are intended as an alternative to such a project-by-project review. LRDPs provide a greater level of certainty and specificity than land use plans or LCPs. As noted, once the LRDP is approved, any subsequent review by the Commission of a specific project is limited to imposing conditions consistent with sections 30607 and 30607.1 of the Coastal Act;
those sections authorize the Commission to impose conditions on coastal development permits to insure consistency with the Coastal Act. Particularly for private universities such as Pepperdine, LRDPs allow a greater degree of certainty and specificity as far as planning, budgeting and fund-raising for future development projects.

On September 12, 1989, the Commission considered the Pepperdine University Long Range Development Plan (LRDP) for the University's 830-acre campus. In its action, the Commission denied the LRDP as submitted and approved it with suggested modifications necessary to bring the LRDP into conformance with the Coastal Act. These modifications related to public access, hazards, visual resources, marine resources, and environmentally sensitive habitat protection. Findings for the September Commission action were adopted by the Commission on January 11, 1990. On February 7, 1990, the Board of Regents of the University acknowledged the receipt of the Commission's certification and agreed to the terms of the modifications to the LRDP. On April 12, 1990, the Commission concurred with the Executive Director's determination that the Board's action accepting the certification was legally adequate and sent such determination to the Secretary of Resources, thereby effectively certifying the LRDP.

The Commission's approval of the LRDP was challenged by the Malibu Township Council. The trial court upheld the Commission's approval, finding that the Commission's review of the LRDP was consistent with the California Environmental Quality Act. The judgment was affirmed by the Court of Appeal in an unpublished decision. ((Malibu Township Council v. California Coastal Commission, Second District Court of Appeal, Division Two, Case No. B061265)

Since that time, the LRDP has been amended seven times and the University has processed eight notices of impending development. Amendments to the LRDP have been approved for such modifications as: additions to the Firestone Fieldhouse gym; relocation of tennis courts; combining and relocation of student housing units; relocation of faculty housing units to Malibu Country Estates subdivision; additions or redesign of various campus facilities; and addition of designated stockpile site in Marie Canyon.

Notices of Impending Development have been approved for such development as: addition to the gym; additions to the Law School; construction of student housing; construction of faculty houses in Malibu Country Estates; remediation of landslide above residential units in Malibu Country Estates; additions to Tyler Center; Alumni Park improvements; construction of stockpile site with restoration of eroded ravine as mitigation; relocation of wastewater flow station. With the exception of the stockpile site and residential units within Malibu Country Estates (residential subdivision adjacent to Pepperdine University campus), all of the amendments and notices of impending development involved projects within the developed area of the campus.
C. Review of Amendment.

The LRDP approved the exact location and extent of development on the site and authorized grading to stabilize the site and construct the approved structures. In the entire area where grading is authorized in the LRDP, all native vegetation will be destroyed. As described in detail above, the changes proposed to the UCD development in LRDP Amendment 1-99 include: increased grading to remediate a deeper slide plane, addition of a secondary access road to improve access for fire protection, and minor modifications to the design of approved structures and facilities. The UCD development, as amended, would not extend development beyond the footprint approved in the certified LRDP. The proposed amendment to the LRDP does not change the area in which vegetation will be destroyed. As such, the area of disturbance would be no greater than the approved project. The additional 1.5 million cu. yds. of grading will be located deeper under the 50.4-acre UCD site. The addition of the secondary access road is designed to improve access to the site for emergency vehicles. The remaining modifications are design changes to the approved buildings and facilities which do not extend outside the approved development footprint or increase the approved square footages or maximum approved enrollment.

Following approval of the LRDP, Pepperdine University, in reliance on that approval, sought and obtained contributions from numerous donors to help finance construction of the graduate campus. In addition, the University conducted extensive geologic investigation to determine the work necessary to stabilize the landslides located in the vicinity of the approved building sites.

Due to the size and extent of the landslides in the area of the proposed Upper Campus, there is no way to revise the project to avoid the destruction of native vegetation, including needlegrass, while still remediating the landslides present on the Upper Campus area. In addition, due to the presence of very steep slopes on the other undeveloped areas of the Pepperdine property, the Upper Campus buildings cannot be located elsewhere on the property to avoid the landslides. Nor is there enough room on the existing lower campus area to relocate the proposed graduate campus facilities. Thus, if the amendment to the LRDP authorizing additional grading is not approved by the Commission, construction of the Upper Campus would not be possible.

Based on the above facts, in reviewing the proposed amendment to the LRDP, the Commission determines that it will only review the changes that the University is proposing to determine if those changes are consistent with the Coastal Act and that it will not re-evaluate the entire approved project for consistency with the Coastal Act. Accordingly, the Commission will not re-evaluate the development that was previously approved in the LRDP that is not being modified in the proposed amendment.
D. History.

The University acquired its Malibu campus in 1968. In 1969, Los Angeles County approved a zone change to allow the campus site to be used for educational purposes. In 1972, the Planning Commission approved a Conditional Use Permit for the expansion of the University's facilities. Specific Plans were not adopted under this Conditional Use Permit until December 30, 1976.

Under the Coastal Act of 1976, the campus came under the jurisdiction of the Coastal Commission. The University applied for a claim of vested rights for all facilities shown on the 1976 Specific Plan. Prior to the effective date of the Coastal Act, the University had obtained numerous grading and building permits from the County and had completed construction of 35 permanent buildings and construction was under way on 4 additional structures. The University had yet to commence construction on a number of other buildings included in the Specific Plan.

The claim of vested rights to complete the remainder of the facilities under the 1976 Specific Plan was denied by the South Coast Regional Commission in June 1977. An appeal of this decision to the State Commission resulted in a finding of no substantial issue, leaving the denial in place.

E. Geologic Stability and Landform Alteration

§30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

§30253 of the Coastal Act states, in part, that:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
As described in detail above, the LRDP as proposed to be amended, would include 4.5 million cu. yds. of grading (2.25 million cu. yds. cut and 2.25 million cu. yds. fill). The proposed grading is both for the creation of building pads and roadways as well as the stabilization of geologic hazards on the UCD site. Exhibit 5 shows the conceptual grading plan for the UCD. Essentially, the plan consists of a main roadway, secondary fire access road, and several pads at different levels up the slopes. The amount of grading approved in the certified LRDP is 3 million cu. yds. The grading plan has been revised because of the discovery of more extensive landslides than were identified at the time of the LRDP certification. Exhibit 6 shows a comparison between the area of disturbance approved in the certified LRDP and that which is proposed in the LRDP as proposed to be amended herein. Following is a chart comparing the grading approved in the certified LRDP and the grading proposed in the LRDP as amended:

<table>
<thead>
<tr>
<th>Proposed Grading—Pepperdine Upper Campus</th>
<th>1989 LRDP</th>
<th>1999 LRDP (As proposed to be amended.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CUT</td>
<td>Project &amp; Roads</td>
<td>1.1 million cu. yds.</td>
</tr>
<tr>
<td></td>
<td>Landslide Remediation</td>
<td>0.4 million cu. yds.</td>
</tr>
<tr>
<td></td>
<td>Contingency</td>
<td>N/A</td>
</tr>
<tr>
<td>FILL</td>
<td></td>
<td>1.5 million cu. yds.</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>3.0 million cu. yds.</td>
</tr>
</tbody>
</table>

The Preliminary Geotechnical Investigation of the Upper Campus Development Plan, dated 5/13/97, prepared by Leighton and Associates, Inc. identifies and characterizes the geologic conditions on the UCD site and makes recommendations for development of the site. This study formed the basis for the analysis of earth resources and potential impacts in the EIR for the UCD project. The University has also submitted a Geotechnical Review of Grading Plan for the Graduate Campus Project, dated 7/16/99, also prepared by Leighton and Associates, Inc. This report was prepared after the approval of the Final EIR. Up to date, the University's geologic consultants have conducted 31 subsurface borings in order to identify and characterize the materials and geologic structures of the site.

1. Geologic Conditions on the UCD site.

The 50.4-acre UCD site is located northwest of the existing, developed campus, above Huntsinger Circle. Steep slopes with some flatter terrace areas characterize the site. Several drainages cross the site, primarily from northwest to southeast. One stream course, which is a tributary to Marie Canyon, is designated as a blue-line stream on the United States Geologic Service (USGS) map for the area. Elevation of the site ranges from approximately 400 feet in the southwest to almost 1000 feet in the northeast. The slopes to the northwest continue rising to form the divide with the Puerco Canyon watershed. Exhibit 4 shows the topography of the UCD site and the surrounding area.
The site is predominately underlain by Sespe Formation sedimentary bedrock and landslide deposits. Small areas of alluvial deposits were identified along the bottoms of the stream courses. Finally, volcanic rock was also found to occur on the site. Identified faults in the area include the Malibu Coast Fault and the Malibu Bowl Faults. The Malibu Coast Fault, which is considered to be an active fault, is located over 4,000 feet to the southeast of the UCD site. One splay of the Malibu Bowl Faults crosses the UCD site, while the other splay is located to the east of the site. Trenching studies conducted by the project geologists found no evidence of activity on these faults within Quaternary time. As such, the Malibu Bowl Faults are considered to be inactive.

The UCD site is susceptible to landsliding and is affected by several large landslides and debris flows. According to the EIR, four translational bedrock slides were found within or adjacent to the UCD site. Additionally, five debris flows were identified on the UCD site. The landslide masses underlie most of the site.

The four landslides have been designated as Qls-2, Qls-6, Qls-7 and Qls-9. Sheared claystone interbeds in the Sespe Formation sedimentary rocks have generally served as planes of weakness along which these slides have occurred. The geologic investigation has indicated that the slides on the UCD site have failed along out-of-slope bedding planes on the northeast/easterly facing slopes. Following is a description of each slide:

**Qls-2** is located approximately 150 feet outside the southwestern margin of the UCD project. The geologist has indicated that this slide is potentially unstable but a stable ridgeline of bedrock lies between the slide and the site. As such, the geology reports conclude that it would not impact the site.

**Qls-6** is the largest landslide found on the UCD site. This slide extends across much of the site, from northwest to southeast. It is approximately 2,600 feet in length and 1,100 feet wide. The slide mass varies in depth up to a maximum depth of approximately 110 feet near the toe. The geology studies conclude that this slide is potentially unstable and without stabilization would negatively impact the proposed UCD development.

**Qls-7** extends across the northwestern area of the UCD site. This slide is approximately 900 feet in length, 310 feet wide at its widest point and a maximum of 50 feet deep. The studies conclude that this landslide is potentially unstable and without stabilization would negatively impact the proposed watertank pad and access road. (Further geologic investigation subsequent to adoption of the EIR indicated that a series of five staggered landslides should be mapped in the area of Qls-7)

**Qls-9** is a slide complex comprised of three adjacent slides located northeast of the UCD site, although the western edge (headscarp) of the slide extends onto the development area. This slide extends in a southeastern direction away from the UCD and is 2,300 feet wide and 700 feet long. The slide is estimated to be a maximum of 70 feet thick. The geologic studies indicate that the upper elevations of this slide are potentially unstable and without stabilization would negatively impact the proposed graduate complex on the uppermost pad and the adjacent roadway.
In addition to the bedrock landslides, several debris flows were also identified on the site. The EIR states that: “Flows most commonly originate as shallow soil slumps in rounded, colluvium-filled ‘hollows’ at the heads of drainages. The rigid soil mass is deformed into a viscous fluid that moves down the drainage swale, incorporateing into the flow additional soil and vegetation scoured from the channel”. The EIR identified five debris flows affecting the UCD site. Subsequent geologic investigation identified two additional debris flows and re-characterized one debris flow as a landslide. Most of the debris flows are located on top of the landslides. According to the geology report, the debris flows in general consist of reactivated portions of the older landslides.

2. Stabilization.

As described above, the LRDP certified in 1989 included a grading plan comprising 3 million cu. yds. (1.5 million cu. yds. cut and 1.5 million cu. yds. fill) for the construction of the development approved for the UCD site. As part of its LRDP submittal, the University submitted the Preliminary Geotechnical Investigation of the Site for LRDP Units Outside of the Existing Developed Area at Pepperdine University, dated 3/15/89, prepared by Leighton and Associates. After their review of the geologic investigation report, staff requested additional information. The University provided a response letter from Leighton and Associates, dated 8/2/89. One of the questions raised by staff in 1989 was: “What efforts were made to ensure that there are no deeper slide planes?” The geologic consultant’s response was as follows:

A number of factors were considered during the geologic evaluation of the site. These include observation of bedrock exposures and detailed geologic mapping, review of previous work performed by others, detailed aerial photo analysis, correlation of on and offsite features and our familiarity with the geologic processes of the area. Originally we proposed deeper borings. During our subsurface exploration, it was determined that deeper borings were not required. The landslide parameters depicted in the referenced report correlate well with the geomorphic/topographic features of the site.

While: “the geologic instability of the campus and the adjacent area south of the campus was of great concern to the Commission in its consideration of the development proposed in the LRDP”, (Commission findings on the Pepperdine LRDP, 12/21/89) the Commission found that based on the geologic investigation and with four suggested modifications, the LRDP would be consistent with §30253 of the Coastal Act. These modifications were the addition of LRDP policies relating to hydrogeologic monitoring and the requirement of setbacks from the Malibu Coast Fault.

Subsequent to the LRDP certification, the University’s geologic consultants undertook further investigations of the site in 1993 to determine the feasibility of constructing a secondary access road, as required by the Los Angeles County Fire Department. This investigation included additional borings in the area of the proposed secondary access road. Anomalies found in the geologic structures encountered in these new borings lead the geologic consultants to deepen one to determine if there was a deeper landslide.
surface present. In this boring, a clay seam was found at 108 feet that the geologic consultants interpreted to be a deep-seated landslide feature. This feature is known as Qls-6, described above. The geologic consultants determined that a major buttress, an upper buttress, and a toe buttress would be required to stabilize this slide. The discovery of this deeper slide plane is the primary factor necessitating the additional 1.5 million cu. yds. of grading for site stabilization in the LRDP, as proposed to be amended.

The grading plan includes three buttress fills and two shear keys designed to stabilize the landslides identified on the UCD. In order to stabilize landslide Qls-6, a buttress is proposed across the south-central portion of the slide. This buttress would be approximately 700 feet long, 300 feet wide and up to 120 feet deep. This area would be excavated to a depth below the slide plane and benched into competent material. A buttress approximately 150 feet wide and 300 feet long is also proposed outside the UCD grading envelope to the south to support a lobe of Qls-6. A buttress across the center portion of landslide Qls-7, which would be approximately 330 feet wide and 350 feet wide, is proposed to stabilize this slide. A side hill shear key reinforced with geogrid material is proposed to isolate the pad and road from the Qls-9 slide complex, should it be activated. Finally, a side hill shear key would be constructed on the western edge of the UCD site, where a cut encroaches into the head region of landslide Qls-6 and debris flow Qls-d5.

All of the debris flow material would either be removed as part of the grading to buttress the landslides, removed by proposed cut, or removed to competent bedrock, all within the footprint of previously approved grading.

3. Grading

In addition to site stabilization, the 4.5 million cu. yds. of grading proposed for the UCD site includes grading of roads and pads. As shown on the Conceptual Grading Plan (Exhibit 5), several large and small pads would be provided. The northernmost pad is the proposed location of the Graduate Complex, including a seven-level terraced parking lot. The next pad downslope would contain the faculty/staff housing area, with several smaller pads for single family residences and two larger pads for townhouses. The next pad area downslope would be the location of the student housing. Finally, the lowest pad would contain the academic learning center and the academic support facility. The grading plan include a primary access road to serve all the pads, a secondary road that forms a figure “8” with the primary road. The certified LRDP included a primary access road that ended in a cul-de-sac. The Los Angeles County Fire Department would not permit an access road of this length without a secondary form of access. Additionally, roads are provided to the housing areas and to the proposed water tank.

As shown on the Conceptual Grading Plan, manufactured slopes would occupy approximately one-half (25-acres) of the overall area of the UCD site. Pads or level
areas would occupy 18.5-acres, and roadways would occupy 6.9-acres. Grading of the UCD site would create a sequence of manufactured slopes, each one supporting a pad area, as described above, upon which development would be located. According to the EIR, the total vertical extent of the successive manufactured slopes would be 530 feet.

The ridgelines on the UCD site would be widened by cutting and the canyons by filling. According to the EIR: “The highest elevations along the northeastern ridgeline are being lowered about 60 feet, and a less prominent northcentral ridgeline is being lowered about 75 feet”.

Notwithstanding the increase of 1.5 million cu. yds. of grading for site stabilization, the ultimate profile of proposed grading, including the proposed manufactured slopes and pads will nearly approximate the grading approved in the certified LRDP. The area to be disturbed by grading will remain at 50.4-acres.

4. Analysis

New development must minimize landform alteration as required by §30251 of the Coastal Act. To ensure compliance with §30253 of the Coastal Act, development must minimize risks to life and property in areas of high geologic hazard. Additionally, §30253 requires that development assure stability and structural integrity.

In this case, the UCD site is affected by geologic hazards. As described above, several large bedrock landslides and debris flows cross the site. When the LRDP was certified in 1989, there was concern with the level of instability on the site and the 3 million cu. yds. of grading proposed for stabilization and pad/road creation. There was discussion at the time of approval that additional grading might prove necessary to stabilize the site, although the University was proposing 3 million cu. yds. of grading. In certifying the LRDP, the Commission found that with the addition of policies relating to hydrogeologic monitoring and setbacks from faults, that the development approved under the LRDP was consistent with §30253 of the Coastal Act. Since certification, the University’s consultants have conducted more detailed geologic investigations of the UCD site and modified the mapping of the slides based on additional subsurface exploration. The presence of deeper and more extensive slide planes requires the necessary site stabilization to extend to a much greater depth, although the grading will be confined to the same footprint.

The Commission finds that the LRDP, as proposed to be amended, will not require additional landform alteration beyond that approved in the certified LRDP. While the grading for the UCD project will be increased from 3 million cu. yds. to 4.5 million cu. yds., this increase will result in grading which extends deeper for landslide remediation. The graded area of the site will not be increased beyond the 50.4-acre area of disturbance approved in the certified LRDP. Additionally, the University indicates that the ultimate profile of the site will remain the same as the proposed UCD project. The pad configuration, road location (with the exception of the added secondary access
road), slope grading, and building location (with slight modifications) will remain as approved. The proposed addition of recreation facilities to serve the proposed housing will be located on the graded pad area and will not require any modification to the grading plan. As such, the Commission finds that the proposed LRDP amendment will minimize landform alteration, as required by §30251 of the Coastal Act.

Given the uncertainties associated with estimating the extent of hazard associated with subsurface geologic conditions, redesign of new development to avoid hazards is the preferable means of minimizing risks to life and property from geologic hazards. In this case, the Commission considered the hazards associated with developing the UCD site when it certified the LRDP and found that the project, including slide remediation, would minimize risks to life and property from geologic hazard. The proposed LRDP amendment would include additional grading for landslide remediation, primarily to stabilize a deeper slide plane identified since certification of the LRDP. As such, the primary change proposed in this amendment is designed to minimize the risk to the approved UCD project from geologic hazard, by remediating the known landslides. Additionally, the proposed addition of a secondary access road to the UCD site will serve to reduce risks to life and property in the event of a wildfire or other emergency. The Commission finds that the proposed LRDP amendment will minimize risks to life and property from geologic and fire hazards, as required by §30253 of the Coastal Act.

As discussed above, the University's geologic consultants have concluded that the proposed 4.5 million cu. yds. of grading would result in slopes, pads, and roads that will be stable, assuring stability and structural integrity, as also required by §30253 of the Coastal Act. In addition, the University states that the landslide on the UCD site is currently unstable and endangers the existing development on the Lower Campus area. The University states that the proposed landslide remediation will also assure stability for the Lower Campus area. Based on the recommendations of the consulting geologists and geotechnical engineers, the Commission finds that the proposed LRDP amendment will assure stability and structural integrity, consistent with §30253 of the Coastal Act.

F. Sensitive Resources.

§30240 of the Coastal Act states that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.
§30230 of the Coastal Act states that:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

§30231 of the Coastal Act states that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The Upper Campus Development (UCD) area of Pepperdine University comprises 50.4-acres northwest of the 230-acre developed portion of the campus. The 50.4-acre project site is in an essentially natural condition. There are several dirt fire roads which cross the area. Several intermittent stream courses cross the UCD site, primarily from northwest to southeast. One stream is designated as a blue-line stream on the United States Geologic Service (USGS) map for the area.

The Pepperdine University Biological Database (PCR 1995) and additional field surveys conducted in 1997 by Envicom Corporation identify and characterize the resources found on the UCD site. These studies formed the basis for the analysis of biological resources and potential impacts in the EIR for the UCD project.

There are several distinct plant communities that were found on the UCD site, including northern mixed chaparral, Venturan coastal sage scrub, annual grassland, and native perennial grasslands. In addition to these habitat areas, several oak trees (Quercus agrifolia) were identified. However, these trees are scattered and do not form a contiguous woodland or savanna. Further, although several stream channels cross the UCD site, including one blue-line stream, no riparian or wetland vegetation was found.

The identified habitat areas are shown on Exhibit 7. As explained in the EIR, "while the plant communities may be well-defined in some places, the vegetation associations tend to overlap considerably on the site". In this way, areas may contain elements of different communities. However, the dominant plant species in each area were designated for the purposes of mapping the plant communities, as shown on Exhibit 7. Following is an acreage breakdown of the habitat types identified on the UCD site:
The UCD project EIR notes that Valley Needlegrass grassland is considered “very threatened” and meriting urgent monitoring and restoration efforts in the California Department of Fish and Game’s Natural Diversity Database (NDDB). The grassland habitat areas found on the UCD site are of particularly high quality. Much of the area was found to have a density of native grasses over 40 percent and some areas approach 90 percent cover with few non-native plant species present. As shown on Exhibit 7, the Valley Needlegrass habitat is located in several large patches on the flatter areas of the site. The plant community that occupies the largest area of the UCD site is the 31.2-acres of Venturan coastal sage scrub. Venturan coastal sage scrub habitat is considered “very threatened” by the CDFG’s Natural Diversity Database (NDDB). Finally, there are four individual plant species present on the UCD site which are considered to be sensitive: Catalina mariposa lily, Plummer’s mariposa lily, Plummer’s baccharis, and Fish’s milkwort.

Within the grading footprint previously approved in the LRDP, all existing native vegetation will be destroyed. As discussed above, the proposed increase in grading from 3 million cu. yds. to 4.5 million cu. yds. would be deeper under the site for landslide remediation within the same grading footprint. The proposed addition of a secondary access road and addition of recreation facilities for the approved housing would be located within the approved graded area. As such, the proposed amendment does not change the grading footprint and therefore does not change the area of destruction of existing native vegetation.

Opponents to the UCD contend that the project is inconsistent with the Coastal Act because it would have adverse impacts on environmentally sensitive habitat areas (ESHAs), particularly needlegrass. However, given the unique facts of the proposed amendment, the Commission rejects the opponents’ contentions. The Commission originally approved the LRDP in 1990. At that time there was needlegrass on the area proposed for the UCD. A “Biological Survey of the Pepperdine University Site for the Proposed School of Business and Management” was prepared by Environmental Audit, Inc., in 1989 for the Commission’s consideration in acting on the LRDP. That survey identified three plant communities on the UCD site: southern coastal sage scrub, chaparral, and southern California grassland. The survey identified needlegrass on the site. The survey did not attach any sensitivity to the grassland habitat, stating that while “the vegetation in the study area seemed to represent a variety of types and conditions, none of these are unique with regard to the surrounding areas.” The survey concluded.
that there were no rare or endangered plants on the site and the site is not critical habitat for any of the animal species that utilize it.

The Commission did not designate the needlegrass as ESHA in its prior action on the LRDP. In approving the LRDP, the Commission imposed a number of conditions including conditions requiring the preservation of over 500 acres as open space and dedication of a 150-acre easement of environmentally sensitive habitat. Apart from the 150 acres of habitat, the Commission noted that the certified Land Use Plan designated none of the area Environmentally Sensitive Habitat Area or Significant Watershed, affording the highest levels of habitat protection. In approving the LRDP, the Commission did not make an express finding that the UCD area was to be considered ESHA. The Commission found that the LRDP with 500-acres of the campus designated as undeveloped open space and 150-acres within an open space easement to be dedicated to a public agency for protection and management, the modified plan was consistent with the application of habitat policies of the Coastal Act.

The amendment to the LRDP does not propose any changes to the footprint of the proposed UCD development which would alter the impacts of the development on the needlegrass. If Pepperdine were to proceed under the LRDP as approved, the impacts on the needlegrass would be identical to the impacts under the LRDP as amended. The amendment itself will have no addition or new impacts on the needlegrass.

Because the needlegrass is located in several areas throughout the graduate campus site, relocating the proposed buildings to avoid destruction of needlegrass is not feasible. Furthermore, the landslide remediation necessary for construction of any structures on the Upper Campus site will require grading of the needlegrass areas, even if the proposed structures (buildings and roads) could be relocated to avoid the needlegrass areas. Therefore, as discussed above, if the amendment is not approved, the Upper Campus Development cannot be built because the site will be geologically unstable.

In light of the Commission’s previous approval of the LRDP, the absence of new or additional impacts due to a change in the location of the proposed development, and due to the fact that it is not possible to revise the project to avoid destruction of the needlegrass, the Commission has determined that it will not re-evaluate the impacts of the approved grading on native vegetation, including needlegrass. Therefore, the Commission finds the amendment to the LRDP has no adverse impacts to sensitive resources and is consistent with the sensitive resource policies of the Coastal Act.

G. California Environmental Quality Act

Pursuant to Section 21080.9 of the California Environmental Quality Act (“CEQA”), the Coastal Commission is the lead agency responsible for reviewing Long Range Development Plans for compliance with CEQA. The Secretary of Resources Agency has determined that the Commission’s program of reviewing and certifying LRDPs
qualifies for certification under Section 21080.5 of CEQA. In addition to making the finding that the LRDP amendment is in full compliance with CEQA, the Commission must make a finding that no less environmentally damaging feasible alternative exists. Section 21080.5(d)(1) of CEQA and Section 13540(f) of the California Code of Regulations require that the Commission not approve or adopt a LRDP, "...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment."

As described above, the Commission has previously determined, in certifying the LRDP, that the approved development, including the UCD project, was the least environmentally damaging feasible alternative. The Commission required mitigation measures as part of the certified LRDP to lessen any significant adverse impact that development of the LRDP would have on the environment.

The changes proposed to the UCD development in LRDP Amendment 1-99 include: increased grading to remediate a deeper slide plane, addition of a secondary access road to improve access for fire protection, and minor modifications to the design of approved structures and facilities. The Commission finds that the UCD development, as amended, would not extend development beyond the footprint approved in the certified LRDP. As such, the area of disturbance would be no greater than the approved project. The additional 1.5 million cu. yds. of grading will be located deeper under the 50.4-acre UCD site and will assure stability for the approved development. The addition of the secondary access road will improve access to the site for emergency vehicles. The remaining modifications are design changes to the approved buildings and facilities which do not extend outside the approved development footprint or increase the approved square footages or maximum approved enrollment.

The proposed changes to the grading plan will serve to minimize risks to life and property from geologic hazard and will not result in any adverse environmental impacts that have not been considered and mitigated in the Commission's certification of the LRDP. Similarly, the proposed secondary access road will serve to improve emergency access to the UCD and will be located within the approved graded area. As such, this additional road will have no adverse environmental impacts. Therefore, the Commission finds that the LRDP amendment is consistent with CEQA and the Chapter 3 policies of the Coastal Act.

Alternatives to the Amendment

As discussed above, it is not possible to revise the Upper Campus project to avoid destruction of the native needlegrass grassland on the Upper Campus site.

A potential alternative site for the graduate campus that would have less impact on threatened native grasslands is the Adamson property, located across Malibu Canyon Road, to the southwest of the existing Pepperdine campus. However, this alternative is not feasible because Pepperdine has already received Coastal Commission approval
for the graduate campus development at the proposed location, and the Commission
does not have the authority to revoke this approval. In addition, the Adamson site is not
a feasible alternative because it is not owned by Pepperdine, there is no indication that
the property is available for sale, it is smaller than the approved graduate campus site
and would not have room for all the proposed development, and would not provide for a
contiguous campus that allows for easy access by both undergraduate and graduate
students to all the facilities.

If the Commission denied the proposed LRDP amendment, Pepperdine would be
entitled to proceed with the development as previously approved in the LRDP. It would
not be able to conduct the deeper grading that it has determined is necessary to
stabilize the site and remediate the geologic hazards on the site. No other alternative
has been identified that would adequately remediate the geologic hazards at the site.
As discussed above, revisions to the project that would avoid the landslides are not
feasible. Accordingly, as a practical matter, if the LRDP amendment is denied, it is
unlikely that Pepperdine could proceed with the development of the graduate campus
due to the unremediated geologic hazards and lack of site stability. Therefore, denial of
the LRDP amendment could mean that the proposed graduate campus project would
not go forward. However, denial of the proposed LRDP amendment by the Commission
is not authorized under the Coastal Act because the amendment (deeper grading and
an additional road within the approved grading footprint) reduces geologic hazards and
increases stability of the site, and therefore is consistent with the Coastal Act
requirements for new development. Finally, if denial of the proposed amendment has
the result that the graduate campus project cannot go forward, this would eliminate the
educational benefits of the project. For all of these reasons, the Commission finds that
the no-project alternative is not feasible.

When the Commission approved the LRDP, the Commission considered a number of
alternatives, including a no-project alternative, full expansion of the campus, the 1988
LRDP alternative, the 1989 LRDP alternative, the expansion of Pepperdine's off-site
educational centers and alternative sites for expansion. In the previous challenge to
the Commission's approval of the LRDP, the Court of Appeal expressly found the
Commission complied with its CEQA obligations in considering those alternatives.
Having considered an adequate range of alternatives in approving the LRDP and having
considered additional alternatives in connection with this amendment, the Commission
finds that the amendment is the least damaging feasible alternative. The Commission
previously considered and imposed mitigation measures on the approval of the LRDP.
Having concluded that the amendment to the LRDP will minimize risks to life and
property and will not result in any adverse environmental impacts that were not
considered and mitigated in the Commission's prior approval of the LRDP, the
Commission finds that there are no feasible mitigation measures available which would
substantially lessen any significant adverse impact of the LRDP as amended on the
environment.
ATTACHMENT 1

SUBSTANTIVE FILE DOCUMENTS


Final Environment Impact Report, Pepperdine University Upper Campus Development, prepared by Envicom Corporation, dated February 1999


Preliminary Geotechnical Investigation of the Site for LRDP units outside of the Existing Developed Area at Pepperdine University, prepared by Leighton and Associates, dated March 15, 1989

Geologic Review of Active, Potentially Active, and Inactive Faults on and in the Vicinity of Pepperdine University, prepared by Leighton and Associates, dated July 6, 1989


Review of Tentative Tract Map No. 49767 for the Site of LRDP Units (Outside of Existing Developed Area), prepared by Leighton and Associates, dated August 16, 1990

Geotechnical Investigation of Secondary Access Road Feasibility, prepared by Leighton and Associates, dated November 23, 1993

Preliminary Geotechnical Investigation of the Upper Campus Development Plan, prepared by Leighton and Associates, dated May 13, 1997

Geotechnical Review of Grading Plan for the Graduate Campus Project, prepared by Leighton and Associates, dated July 16, 1999

Biological Database for Pepperdine University, prepared by Planning Consultants Research, dated September 29, 1995

Oak Tree Report for Pepperdine University, prepared by Planning Consultants Research, dated January 1996


Biological Survey of the Pepperdine University Site for the Proposed School of Business and Management, prepared by Environmental Audit, Inc., dated March 1989
Proposed Graduate Campus Project

[Diagram of Pepperdine LRDPA 1-99 UCD Site Plan]

Source: Pepperdine University, 1992

EXHIBIT 3
Pepperdine LRDPA 1-99
UCD Site Plan
Comparison Between Original and Proposed Grading Plan

EXHIBIT 6
Pepperdine LRDP 1-99
Comparison of Grading Plans
LEGEND
- UCD Grading Envelope
- Venturan Coastal Sage Scrub
- Native Grassland
- Annual Grassland
- Chaparral
- Mixed Coastal Sage Scrub/Grasses
- Plummer's mariposa lily
- Disturbed / Fill Material

Vegetation Map

Winding Path
Native Grassland
Mariposa Lily

Source: Planning Consultants Research, 1996 / Envicom Corporation 1997

EXHIBIT 7
Pepperdine LRDPA 1-99
Habitat Map
STATE OF CALIFORNIA
COASTAL COMMISSION

PEPPERDINE UNIVERSITY,
CITY OF MALIBU,
COUNTY OF LOS ANGELES

Long Range Development Plan
Amendment 1-99

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Tuesday
October 12, 1999
Agenda Item No. 15.a

City of Oceanside
City Council Chambers
300 North Coast Highway
Oceanside, California

EXHIBIT 8 (126 Pages)
Pepperdine LRDPA 1-99
Hearing Transcript—October 12, 1999 Hearing

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Barbara Carey, Coastal Staff Analyst
John Dixon, Staff Geologist

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CHAIR WAN: Yes, we have a quorum. With that, I am going to call the meeting to order.

We are going to do something a little bit unusual. I have a special request from Supervisor Yaroslavsky, who would like to speak at this time, because he has another meeting. I am going to honor that request.

Welcome Supervisor Yaroslavsky. I understand you also have requested five minutes. So, for you to understand, normally it is three minutes, but I will -- you are getting one from Assemblywoman Sheila Kuehl, so I will give you the extra minute -- and you are going to create problems for me in the future, you do realize that, with other electeds.

MR. YAROSLAVSKY: The next time you come to the board of supervisors, I'll reciprocate.

CHAIR WAN: Oh, thanks, okay.

MR. YAROSLAVSKY: I'll try to keep it less than five minutes, Madam Chair, and I appreciate you taking me out of order, because we do have a board meeting at 1:00 o'clock.

CHAIR WAN: And, I appreciated that, so that is why I am doing this.

MR. YAROSLAVSKY: Thank you very much.
Welcome.

MR. YAROSLAVSKY: It is good to be here, members of the Commission. I have never addressed your Commission on any matter, including many matters that affected my district, which includes the Malibu area of Los Angeles County. But, I felt so strongly about this, that I wanted to personally appear.

I am not going to comment on whether the original idea of putting a university in Malibu was a good idea, or a bad idea. Maybe some of us would have made a different decision if we were in a position to do it at that time.

But, the fact is we have a university there. They have been a good neighbor -- they have been more than a good neighbor. They have done everything we have ever asked them to do, through the zoning process, and otherwise, and they are part of that community. And, while there are never any settled issues in Malibu, the fact is that if there should be one it is the existence of this university. It is not going anywhere. It is not leaving.

So, now the question is: how do we work in partnership with this major use, with this major neighbor, in the Malibu community? To deny them their plan to build their graduate school, which is consistent with the Long Range Development Plan that this Commission approved, and which this Commission defended in court, and which we have all
adhered to, and have all had reason to believe was the Long
Range Development Plan, it would be foolish on all of our
parts.

We have worked very closely. I, personally, and
my staff, have worked very closely with the university and
their staff in the development of their plan. Again, they
did everything we asked them to do. We asked them to do more
than they were required to do, they did it. We asked them to
dedicated Las Flores Canyon, they dedicated it. We asked them to
set aside needlegrass habitat on site, they did it. We asked them to
make traffic mitigations to accommodate the
communications of the City of Malibu, and Calabassas, they did it.
We asked them to accommodate the issues that were of concern
to the National Park Service, and the State Park Service,
they did it. And, all of these entities, Malibu, Calabassas,
National Parks, State Parks, all come without opposition, or
even in support of this particular plan.

I am not going to get into the legal issues.
There are plenty of lawyers here who are paid much more than
I am. They can talk about the legal issues.

But, I do want to just talk about a common sense
human issue. A university is not like a local 7-11. It is
not like an office building, a spec office building, or
shopping center. A university is like a battleship. I
represent the biggest universities in Los Angeles County in
my district, from UCLA to CSUN, to Pepperdine, to a host of small colleges.

These universities, when they plan their academic futures, don't plan a year, or two, or three ahead of time. They plan decades ahead of time. So, when you set a set of rules and regulations, by which they then go out and raise the funds, get the endowments, get the commitments, envision what their academic future is, it is a 10-year, 15-year proposition. That is what they did. They played by the rules as they were set down. They played by the rules as were affirmed by the court.

It is a good plan. I am here to tell you it is good plan. I support housing for the university students and faculty on site. I would rather have them on site than traveling across Las Virgenes Canyon Road to the campus, or up PCH, to the campus. I support the graduate school being on the site. It makes sense to have graduate, and under graduate on the same site. From an educational point of view, it is a good thing.

So, all of the aspects of this plan -- and I am not going to get to every micro-managed detail, but the big picture of this plan, it is a good plan, and it is consistent with what we have done.

And, I would urge you to balance whatever technicality you may think has arisen, and there may be -- I
am not going to get into the technicalities either -- balance that against the educational institution, which is this university, Pepperdine University. They have been a solid neighbor in Malibu. They have been good for the community. They have been good for the economy of the community.

But, above all, they have fulfilled their mission, which I think is partly our job to help them, once they are there, not to stand in the way of their mission, which is to educate young people. Education, whether it is private or public -- and I am a product of public -- but whether it is private or public, is a very important thing. It is the backbone of our democracy, and of our society.

There is -- I would urge you today -- and I know you have a short Commission, but I would urge you today, not to disapprove, to approve the plan that they have before you -- to approve a plan that was unanimously approved by the board of supervisors of our county, unanimously approved by the planning commission of our county, chaired by my appointment, Esther Feldman, whom you know, many of you know, and a resident of Malibu. And, they exacted the last pound of flesh out of these folks, and maybe there is another ounce of flesh that can be exacted. But, to deny the permit to allow them to fulfill their dream, their vision, that they have had reason to believe that they could do, based on what has been approved previously, would be a horrible mistake,
and it would be wrong.

So, I thank you. I hope I didn't exceed my time limit, Madam Chair, and I will reciprocate when you are in our Hall of Administration. Thank you very much.

CHAIR WAN: Thank you very much. It is hard to resist your own representative.

MR. ZAROSLAVSKY: I'm irresistible.

CHAIR WAN: Okay, with that, I will go to staff.

We do have a speaker from Sheila Kuehl's office, Assemblyman Kuehl's, but she can wait until, I think, the regular time.

So, with that I am going to go to the staff.

CHIEF DEPUTY DIRECTOR DAMM: Thank you, Madam Chair.

Item 15.a. is proposed Major Amendment 1-99 to the Pepperdine University Long Range Development Plan, or LRDP for short. Commissioners, staff has a coordinated presentation that will take about 10 to 15 minutes today. I will make a few introductory comments, followed by Barbara Carey, our staff person in the Ventura office who prepared the staff report, and who will explain the basis for our recommendation. And, then John Dixon, the Commission's staff biologist will discuss the significance of the native grasslands present on the upper campus of the University of Pepperdine.
Before proceeding, staff does want to acknowledge our appreciation to the university, to Dr. Benton, and the staff members at the university who have worked with us throughout the years, and including on this amendment that is before you today. Certainly, they have always conducted themselves in a very professional manner, and we very much do appreciate that.

However, while the staff fully understands the importance of educational facilities, and institutions at all levels of education, we have a law to carry out, and that law is the California Coastal Act, and in looking at that our conclusion was that the amendment that is before you today is not consistent with the policies -- more specifically the resource protection policies, and the geologic hazards policies of the Coastal Act.

This is a very difficult matter, and one of the arguments that you are going to hear repeatedly today, I suspect, is that there is a question of equity, that the Commission, approximately 10 years ago approved a Long Range Development Plan for the university, and as part of that Long Range Development Plan it allowed for substantial expansion of the university, within what is referred to as the developed, or lower portion of the campus, as well as expansion into the area that is referred to as the upper campus. It is that upper campus area that is the issue of
concern today, and which the staff is recommending that you not approve the amendment that would allow for the expansion into the upper campus. It does not affect the lower campus at all.

The reason that the staff concluded that we should recommend denial of this Long Range Development Plan amendment is that even 10 years ago, when the Commission was reviewing this, there was great concern over the geologic stability of the upper campus site. There was a large amount of testimony that was presented at the time with regards to geologic stability. In fact, the Commission required the university to do additional testing of the geologic stability of the site over a period of time, before you took action on that Long Range Development Plan.

Part of what the issue is before you today is that since you approved the Long Range Development Plan 10 years ago, the university has discovered that the geologic issues associated with the site are far worse than what was even contemplated 10 years ago. The result of that is that the remediation necessary for the site increases the amount of grading from approximately 3 million cubic yards, to some 4.5 million cubic yards. So, that is one issue that is before you today.

The other issue that is before you today revolves around the staff's discovery that there is a significant
stand of native grasslands present on the portion of the property where the upper campus improvements will be built, and you will be hearing more on that from Barbara Carey, and John Dixon of our staff.

At this point, I would like Barbara to go over the bases, specific bases for our recommendation.

COASTAL STAFF ANALYST CAREY: Thank you.

Yes, Commissioners, just to give a very short background. As we have heard, in 1989 the Commission considered the Long Range Development Plan that included the upper campus area, as well as the remainder of the 830-acre campus.

In that action, the Commission denied the LRDP as submitted, and approved it with suggested modifications. That LRDP included three million cubic yards of grading for the upper campus, and also included 234,000-square feet of housing, and 150,000-square feet of academic buildings. The university now proposes to make several revisions to that certified LRDP, and that includes an increase in grading from 3 million to 4.5 million cubic yards, modifications to the circulation system, which includes the addition of a secondary access road. That was necessary to meet fire department standards.

They are requesting to redesignate a church facility to an academic facility, and there are also various
changes to the design of the approved structures within the same square footages. The university is not proposing at this time any changes in the total square footage of housing, or academic buildings.

The upper campus project, as proposed to be amended -- as we have heard -- was also considered by the County of Los Angeles for a conditional use permit, as well as other discretionary approvals, like an oak tree permit, and a parking permit. An environmental impact report was prepared, and certified by the county for the project.

As we have stated, staff is recommending that the Commission deny LRDP Amendment 1-99 as submitted. The LRDP, as proposed to be amended, is not consistent with Sections 30240, 30251, or 30253 of the Coastal Act. The two main issues involved are the increased grading for site stabilization, and the destruction of native grassland from the site.

The motion and resolution necessary for this action are detailed on page 2 in the staff report.

As I have mentioned, the original LRDP included 3 million cubic yards for the upper campus area, subsequent to that certification, the university's geologic consultants undertook further investigations of the site in response to the fire department's requirement for a secondary access road.
At that time, it was discovered that one of the slides had a much deeper slide plane than was previously identified. In order to take care of that slide, that is primarily the increase in grading that we are seeing now. The conceptual grading plan that the university is proposing has 4.5 million cubic yards of grading. That is balanced on site with 2.25 million cubic yards cut, and 2.25 million yards of fill.

The proposed grading is both for the creation of the building pads and roadways, and well as the stabilization of the landslides. Four bedrock slides, and five debris flows were found within or adjacent to the upper campus site. The landslide masses underlie most of this site, and the grading that is proposed includes three buttress fills, and two shear keys designed to stabilize the landslides.

Just as an example, to give you an idea of the scale we are talking about, the buttress to stabilize the largest landslide, which is called QLS-6, is proposed along the south-central portion of this slide, and that buttress would be approximately 700-feet long, and 300-feet wide, and up to 120-feet deep.

Given the uncertainties that are associated with estimating the extent of hazard associated with sub-surface geologic conditions, such as this, redesign and new development to avoid hazards would be the preferable means of
minimizing risk to life and property from geologic hazards.

However, in this case, given the size and location of the landslides on this site, it would not be possible to redesign the project to avoid all of the landslides. They would still need to be stabilized in order to develop this site with the uses that are proposed.

The university's geologic consultants have concluded that the proposed grading would result in slopes, pads, and roads, that would be stable, assuring stability and structural integrity.

While it may be technically possible to stabilize this site, to do so requires excessive landform alteration of a type and magnitude that the Commission has not approved for other projects in the Santa Monica Mountains. The grading plan would not minimize landform alteration, as required by Section 30251.

Further, conditions may be such that during construction it may prove necessary to do even more grading than is currently anticipated. The Commission has certainly found that to be the case in other projects, and certainly not projects of even this scale.

So, getting back to the landform alteration, the additional 1.5-million cubic yards of grading represents a 50 percent increase in total site grading, and although the university has stated, and has designed the project, to
result in the same ultimate profile of the site, that is
certainly an excessive amount of landform alteration, in our
view, and not only from a landform alteration standpoint, but
also from the impacts it would have to sensitive resources on
the site, including the sensitive needlegrass.

The detailed onsite biological surveys that were
carried out for the EIR identify this needlegrass habitat of
over 8 acres to be found on and around the upper campus site,
and staff would just note that the majority of areas like
this in California have been converted to agriculture,
subjected to disturbance, that allows replacement of native
grassland species with annual grasses, or graded for
development, thereby significantly reducing the historical
extent of this habitat statewide.

While several sensitive habitats, and sensitive
plant and animal species were found, no listed endangered
species of plants or animals were identified on the upper
campus site; however, I would note that while the presence of
endangered species would be indicative of an environmentally
sensitive habitat area, under the Coastal Act that is not
required. Rather, environmentally sensitive area under the
Coastal Act, means any area in which plant or animal life, or
their habitats, are either rare, or especially valuable
because of their special nature and role in an ecosystem, and
which could be easily disturbed or degraded by human
activities and developments.

We feel there is substantial evidence provided by the biological surveys that the grassland habitat located on the upper campus site must be considered ESHA under this definition, and our staff biologist, John Dixon, is going to discuss in greater detail the reasons why we feel that is the case. But, we are recommending that the Commission find that this grassland constitutes ESHA under the meaning of the Coastal Act.

Section 30240 of the Coastal Act requires that environmentally sensitive habitat areas are protected against any significant disruption of habitat values, and that only uses dependent on those resources can be allowed within ESHA. The LRDP, as it is proposed to be amended, is clearly not consistent with this policy. The valley needlegrass grassland areas on and adjacent to the upper campus site would not be protected against any significant disruption of habitat values; rather, these areas would be destroyed as the result of the proposed 4.5-million cubic yards of grading, and additionally by the fuel modification that would be required around the site.

Typically, to insure compliance with Section 30240 of the Coastal Act development must be located outside of all ESHA areas, and development adjacent to an ESHA must provide a setback, or buffer, around the ESHA that is adequate to
prevent impacts that would degrade the resources.

In this case, the instability of the upper campus site would prevent the university from re-siting, or re-designing development to be located outside of ESHAs, or to provide an appropriate buffer to protect against any significant disruption. Even if the road and pad grading could be redesigned to avoid the grassland areas, the underlying landslides would also require stabilization for the site to be developed.

While the university has proposed, and is required under the county approvals to provide several mitigation measures to offset the impacts of the upper campus development on biological resources, the county's EIR acknowledges that there would be significant adverse impacts to the valley needlegrass grassland that could not be mitigated, even with the implementation of the mitigation measures.

This mitigation is the protection, or the enhancement of in-kind grassland habitat, or other degraded areas at a 1:1 ratio, and the donation of $75,000.00 as a contribution for the acquisition by a public resource agency of property that contains valley needlegrass habitat.

In conclusion, staff is recommending denial of the amendment, in order to protect environmentally sensitive habitat area, to minimize landform alteration, and to
minimize risks from geologic hazards, consistent with the Chapter 3 policies of the Coastal Act.

[ Slide Presentation ]

And, we do have a few slides. Oh, that is really dark. I don't think we are going to be able to see much from that. Why don't we just go to the next slide, unfortunately.

This is a plan of the proposed upper campus development, and this is showing the roads and general area. The upper pad area would be the graduate campus uses, the next pad down would be the faculty and staff housing, student housing in the center pad, and then academic facilities at the bottom.

This plan does show the additional loop road, here, which was required for this secondary fire access.

Next.

CHAIR WAN: Could you show that again? I couldn't see the --

COASTAL STAFF ANALYST CAREY: I am sorry.

CHAIR WAN: -- pointer very well. Which is the secondary access, that was required?

COASTAL STAFF ANALYST CAREY: I am sorry. It is this road. This was added.

Originally, the plan provided for a road much in this configuration, that ended in a cul-de-sac, and the fire department wants there to be two accessways in and out of the
EXECUTIVE DIRECTOR DOUGLAS: Apparently, the pointer doesn't reflect too well on this.

COASTAL STAFF ANALYST CAREY: Yes, a high-tech screen. Well, this one is a little better, okay.

This shows the conceptual grading plan, and the dark green areas on the map will all be manufactured slopes, while the light green are the pad areas, and the gray are the roadways.

This is the biological map showing the various habitats on the upper campus site, and I think you can see, in the yellow, these are the valley needlegrass grasslands. The dark green are the coastal sage scrub, interspersed with valley needlegrass areas. The light green areas are the coastal sage scrub, and this pink is the area where the Plummars Mariposa Lily was found in significant -- what am I trying to say -- in concentrations that were significant enough to be mapped in those areas. It is also found in other areas of this site.

And, the line is showing the upper campus outline, so there are few grassland areas over on this side. Some of this area would be impacted by the fuel-mod, and the remainder of the areas would be left naturally.

These are really dark. This is showing the upper campus area, here.
This is from a ridge approximately the same
elevation on the other side of the campus.

I don't think these are going to turn out very
good.

CHAIR WAN: We can see them fairly well in our
video monitors.

COASTAL STAFF ANALYST CAREY: Can you? Okay.

CHAIR WAN: I am sorry for the audience may not be
able to see it too well, but that is why I have called the
other Commissioners over, who do not have monitors, to be
able to take a look.

COASTAL STAFF ANALYST CAREY: Okay, great.

You can see these squares are a way that the
university has flagged out the ultimate elevations. You can
see this ridge here, would be taken down to approximately
this pad elevation.

This is an example of some of the existing housing
on the site, and it would be about this approximate design,
is what is proposed for the housing on the upper campus.

And, this is showing the central area of where the
grassland is located. You can see it is a little less steep
in those areas.

And, this is a slide located in the grassland
area.

And, I think that's it. So, that would conclude
my comments, and I will pass it on to John Dixon.

STAFF GEOLOGIST DIXON: Good morning, Commissioners. I would like to address the question of whether valley needlegrass grassland should be considered ESHA, and say a few words about the restoration potential.

The basis for designating an area as environmentally sensitive is rarity or special value, and susceptibility to disturbance and degradation.

Native prairies are now rare throughout California, as the result of agriculture and development and invasion by exotic annual grasses. Statewide, California grasslands have been reduced from about 22 million acres in the 1700s, to about 2 million acres now. And, of those 2 million acres, the vast majority have been converted to exotic annual grasslands.

The valley needlegrass grassland is particularly uncommon, especially in coastal areas, and this rarity is underscored by the fact that examples of this habitat is universally referred to as relic perineal grasslands by specialists. Coastal terrace grasslands have almost entirely been destroyed by development and agriculture.

The existing native grassland at the Pepperdine site is apparently extraordinary for both its quality and its size. The EIR and the biological data base of Pepperdine University described the native grassland as usually
dominated by purple needlegrass that often forms dense mono-specific patches, interspersed with other native perineal bunch grasses, and annual flowering bulbs. The density of native grasses exceeds 40 percent in many places, and is near 90 percent in some areas.

I described this community to several specialists, including Dr. Mark Stromberg, who is manager of the UC Berkeley's Hastings Reserve, which includes a substantial needlegrass grassland. And, Dr. Stromberg is a native grassland expert, and you have before you an e-mail that he sent with the understanding that it would be entered into the record.

He, and his colleagues, have surveyed 80 relic stands of perineal grassland along the central coast that were particularly chosen because they were in pretty good shape. Based on the description of the Pepperdine site in the EIR it is probably a more pristine example of grasslands than any of those chosen 80 sites.

The quality of the site suggests it has never been plowed, or at least has not been plowed for a very, very long time. Eight acres is an extremely significant area for such a pristine community. In Dr. Stromberg's study, most of the relic native grassland were less than 5 acres in extent.

These communities are also important because they are characterized by very high bio-diversity. Many plant and
animal species are associated with needlegrass grassland.

Dr. Stromberg, and his colleagues, recorded 326 species of herbs in their study, with an average of about 50 species in a quarter-acre site. In addition, many insects are relying on these plants species during some stage of their life cycle.

Needlegrass grassland is also comprised of unexpectedly long-lived individuals, and this is the result of work that Dr. Jason Hamilton, who worked with Professor Bruce McHall at UCSB at the Hastings Reserve, has recently discovered. His study was of marked populations of purple needlegrass, and based on the observation of nearly zero mortality of large individual clumps, over a period of 40 years, he estimated that large individuals and natural undisturbed habitats are at least several hundred years old.

Valley needlegrass grassland is rare. It has special values, and its susceptibility to disturbance is obvious.

I would also like to discuss the likelihood of creating this habitat, or restoring valley needlegrass grassland, where it has been previously grown, but has been destroyed by development or agriculture -- actually, by agriculture.

Now, it is relatively easy to grow individual species of native grasses, and in particular it is a fairly
simply matter to grow gardens of needlegrass. Needlegrass is frequently hydroseeded to stabilize slopes, or as part of native ornamental planting in developed areas. These are low-diversity, special purpose plantings, which are quickly invaded by exotic annual species, and they bear little resemblance to natural perineal grassland habitats.

It is difficult to create native perineal grassland communities, because this requires particular soil characteristics, and it involves a whole suite of species, in addition to the needlegrass. In fact, to date, no one has created a valley needlegrass grassland, similar to undisturbed natural stands.

Natural perineal grasslands tend to occur on deep, heavy soils. Once these soils are significantly disturbed, they are extremely difficult to restore. It takes many decades without additional disturbance for the microbial community to approach its previous state. And, the disturbed areas are quickly dominated by exotic annual grasses, which have very shallow roots, compared to native grasses, and have different effects on soil structure.

Dr. Stromberg and his associates have been working many years developing techniques to restore old fields to native prairie. They have established native perineal grasses on over 30 sites. It has often required many years to establish the perineal grasses and prevent evasion of
exotic annuals. And, even after this substantial effort, diversity is low. It would require many decades to restore a native grassland community.

And, this should not be surprising when one considers the fact that as late as 1977 there was not a single study of California Native grasslands that was based on quantitative sampling.

So, in summary, by every ecological standard, the native grassland described at Pepperdine is environmentally sensitive habitat area, and although it is theoretically possible to create a native grassland community, it has never been accomplished.

Thank you.

EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, just some closing comments.

We understand the arguments by the university and proponents that the Commission approved the underlying use some 10 years ago, and that somehow the Commission should be bound by that decision, but in fact there have been significant changes on the ground, and the Commission cannot ignore those changes in applying the law to the facts in this case.

The geological information, and the changes in that information requiring the additional grading, that is a change, a very significant change that the Commission must
address. The fact that there are ESHA resources, and ESHA issues that have now been discovered on the site, that were not adequately dealt with before -- and I understand the argument is, "Oh, yes, it was." It was not. If you look at the environmental documentation back 10 years ago, it was just mentioned in passing.

It was because there was an environmental impact report that had to be done for this project that the issue of the extent and the nature and the viability of the needlegrass ESHA habitat was first brought to our attention. So, that is an issue that the Commission must deal with as it exists on the ground.

This is not a new situation for the Commission. You often find issues that come before you -- you have some in neighboring jurisdictions, where because of the emergence of ESHA resources you have had to apply the law to the facts as they exist; notwithstanding that the underlying plan did not call for that level of protection. You have that in a whole variety of issues. You have dealt with these before. So, this is nothing new.

So, again, in closing, the staff wants to again emphasize that in no way our recommendation based on any kind of hostility or concern we have over private education. That simply is not an issue here. And, the argument that somehow the Commission should overlook these specific policies and
requirements in Chapter 3 of the Coastal Act for the benefit of educational facilities, such as this, and use somehow the policies in the first chapter of the Coastal Act to override the resource protection policies is simply not the application, proper application, of the law.

So, with that, Madam Chair, we have completed our report.

CHAIR WAN: I am going to call for ex-parte communications, and start with Commissioner Orr.

COMMISSIONER ORR: None.

CHAIR WAN: Commissioner Daniels.

COMMISSIONER DANIELS: Yes, I have some to declare.

On October 7, 1999, I had a telephonic communication with Dr. David Davenport of Pepperdine, Lucinda -- I think she is also known as Cindy Starrett, and Lauren Montgomery of Latham and Watkins, and we discussed their contention of their reliance on the plans. We discussed an interpretation of the Bolsa Chica case. We discussed alternative siting. And, then, I called them again the following day, and I spoke again with Cindy Starrett, and Lauren Montgomery with respect to their arguments regarding government estoppel and detrimental reliance.

CHAIR WAN: Commissioner Kruer.

COMMISSIONER KRUER: Yes, Madam Chairman, I on
10/6 I had a meeting with, in Commissioner Kehoe's office in San Diego, and Craig Adams of her staff, and representing Pepperdine, Cindy Starrett and Rick Zbur and Nancy Lucast, and we talked about the Long Range Development Plan and the relationship to the existing certified LRPD, and the treatment of the needlegrass in the original Long Range Development Plan and the proposed project, and the need for remedial grading and to cure the geotechnical problems.

Also, I had a brief telephone conversation last Friday, and yesterday, trying to arrange to get some grading plans, and maps, so I could evaluate the remedial nature of the grading, and look at that, with Lauren Montgomery.

CHAIR WAN: All of my ex-parte communications are written and on file.

Commissioner Dettloff.

COMMISSIONER DETTLOFF: Yes, I met on 10/11 with Lucinda Starrett and Joseph Bentley from Latham and Watkins, and Eileen Padberg and Nancy Lucast, and we just went over the past actions, and how those actions will now impact decisions we are making today. We went over the project site, and the ramifications of our decisions.

CHAIR WAN: Commissioner Allgood.

COMMISSIONER ALLGOOD: Yes, I met with Rick Zbur, and Cindy Starrett, and David Davenport, in my offices on October 7. We talked about their reliance on the Long Range
Plan, the reasons behind the additional grading, and their view of the needlegrass issue.

CHAIR WAN: Commissioner McClain --

COMMISSIONER ALLGOOD: And, I had a conversation this morning with Rick, as covering roughly the same items.

CHAIR WAN: Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: October 7, I had a telephone conversation with Los Angeles City Attorney James Hahn, and we discussed the project amendment generally, and Pepperdine's responsiveness to planning issues.

On October 8 I had a telephone conversation with George Mihlsten, and we discussed, again, Pepperdine's Long Range Development Plan. I also had a meeting in my office with Cindy Starrett, and Andy Benton, where we discussed Pepperdine's response to the staff report in detail, and also arguments related to estoppel and reliance.

Thank you.

CHAIR WAN: Commissioner Flemming.

COMMISSIONER FLEMMING: I have actually been unavailable, but I did have a brief discussion this morning with Nancy Lucast, again, on the LRDP and their reliance on the plans in place, similar conversation to Shirley's conversation.

CHAIR WAN: With that, I am going to open the public hearing, and let me tell you how I am going to
organize this. I have a couple of elected representatives, or their aides, to speak. I am going to take them first. Then Pepperdine has indicated that they have a prepared presentation of 25 minutes, and a number of speakers who will speak after them, of two minutes apiece. That should take us about 45 minutes, is my estimate.

For those who are speaking in opposition, if you have a prepared presentation, I will give that prepared presentation, the 25 minutes that I am giving to Pepperdine, so you might think about how you want to organize your time. And, then, in addition, two minutes for each of the individual speakers.

So, we are going to arrange the presentations that way, and I am going to call first Assemblyman Wright, welcome. You have three minutes.

MR. WRIGHT: Okay. Good afternoon, Madam Chair, members. I am Assemblyman Wright, and I represent the 48th Assembly District in the California State Assembly. And, I am here today to express my support for the Pepperdine plan, and also join with my colleague, Assemblywoman Sheila Kuehl, who represents the area, who also is a supporter of the plan.

As many of you may know, I was the student body president at Pepperdine in 1972, have been involved in working with the university since actually going back to 1967, when it was located on 79th and Vermont, which was
actually in my Assembly District.

I am proud, as I was many years ago, to call myself a wave and an alumnus of the university. You know, to not take all of the time, as I have a number of other things that I could say, but in three minutes, just to truncate the remarks, Madam Chair.

You know, I think, again, the issues of the plan were decided sometime ago. I mean, this was looked at, Attorney General VandeKamp represented this matter in court. It was heard. The issue of the needlegrass, and all of those things were taken into account. There were some seismic issues that have since come up, but what we are talking about is not expanding the footprint of what's to be developed. What we are simply talking about is making sure that you anchor the new facility in the current seismic situation. That is not expanding the footprint. It is not making this situation any larger.

What's more, I think that there is enough mitigation for the 500-and some acres that are being preserved relative to the needlegrass, and a number of the other things.

I think that if we are not able to approve this that we hamper what, in effect, is a world-class university. I don't think anyone would argue, and I know since '72, since I have been both a student and affiliated with Pepperdine,
the university has been involved with civic affairs, is the staging area for environmental things, and other things that go on in the community. The students have been good neighbors, and made sure that they have availed themselves, and the community has availed itself of the university.

I think that given the fact that this matter has been heard, given the fact that the university has been given assurances that it could go ahead, to withdraw that at this time, and to rescind what was, I believe, a properly heard and adjudicated decision would violate, I think, all of the rules of fairness, and other things, that we should have.

I would request, respectfully, that the members of the Commission approve the Long Range Development Plan for the graduate campus at Pepperdine University, for the benefit, not just of the Malibu community, but for the benefit of State of California, and the nation, as well, because we all benefit when the private educational institutions, such as Pepperdine, able to advance in this manner.

Thank you very much.

CHAIR WAN: Thank you.

I have a question of Ms. Patterson. If there has been a communication, even if it has been submitted in writing, if the communication is less than 7 days, is it necessary to declare it orally, as well? In other words, if
it has been submitted to the Commission's offices?

DEPUTY ATTORNEY GENERAL PATTERSON: Was this a communication that was submitted to everyone? and to staff? or just --

CHAIR WAN: No, I am talking about an ex-parte communication to a Commissioner that was --

COMMISSIONER MC CLAIN-HILL: Seven days.

CHAIR WAN: -- held, or took place less than 7 days, but was submitted in writing to the Commission's offices, the copy of it. Is it still necessary to disclose it verbally, at the time of the hearing?

CHIEF COUNSEL FAUST: If copies were provided and placed in the administrative record, and staff has it as part of the administrative record, then you needn't separately report it. I am assuming that you are talking about a written document?

CHAIR WAN: Yeah, I am talking about --

COMMISSIONER MC CLAIN-HILL: It is oral.

CHAIR WAN: -- the ex-parte communication.

CHIEF COUNSEL FAUST: If it is an oral --

CHAIR WAN: The form.

CHIEF COUNSEL FAUST: -- the form is based upon an oral communication.

CHAIR WAN: Correct.

CHIEF COUNSEL FAUST: Now, I understand what you
are saying. You need to report it today.

    CHAIR WAN: Okay, that was the question --
    CHIEF COUNSEL FAUST: I misunderstood you the first time.

    CHAIR WAN: -- that came up, okay.

    In which case, I need to report that on October 8 -- because I did submit this in writing -- I did have a conversation with Andy Benton at my home, and we discussed the issues regarding the staff report in general. Given my history with the project, and where I live, I was very familiar with it, and we just went into some of the issues that were -- I don't have my written report in front of me, which I submitted, which are in the staff report -- specifically, the grading and the needlegrass, and the university's reliance upon previous Commission action.

    With that, I am going to call Laurie Newman.

    Welcome.

    MS. NEWMAN: Welcome, good afternoon, Honorable Chair and members of the Commissioners. My name is Laurie Newman. I am representing Assembly Member Sheila Kuehl this afternoon, who made quite an attempt to be here. She actually drove half way and turned around, realizing that she wouldn't be back in time for her next appointment, so I just wanted to let you know that she is sorry that she can't be here.
And, I am going to read a letter that we sent to you last week, that you probably have in your packet, but I would like to read for the record.

"I am writing to express my strong support for the proposed amendment to Pepperdine University's LRDP. Pepperdine, which lies in the 41st Assembly District is a premier educational institution, and a good institutional citizen who has consistently played by the rules. The Coastal Commission approved the university's LRDP in 1990, and the graduate campus project was a key element of that plan.

"The staff's recommendation that the Commission now deny the proposed amendments creates a difficult, and essentially unfair, conundrum for the university, which followed every instruction, and now finds that it must defend plans before the Commission, although different in makeup, that granted approval nine years ago. This is the university's final step after many years of meetings, negotiations, and most importantly agreements. The Coastal Act, in recognizing the importance of education, encourages long term planning for educational uses in the coastal zone. In this particular
case, I believe the staff has given insufficient
weight to the educational, as well as the visitor-
serving uses of the graduate campus project.
"Certainly, almost every decision any governmental
body has to make involves the weighing of
positives and negatives, competing interests,
and the inherent conflict between serving people
and protecting our precious resources.
"Your charge, as I understand it, is to protect
the resources of California's coastal zone,
giving appropriate consideration to the complex
needs of the surrounding community. Pepperdine
University, as an educational institution, has
done exactly what the Coastal Act states: it
developed a long term plan, approved by the
Commission, that afford students the opportunity
to learn and visitors the opportunity to
participate in a multitude of stimulating
programs, while paying attention to the needs
of the coastal area.
"I understand the staff's two primary concerns,
the loss of valley needlegrass, and the amount
of grading deemed necessary to safely develop
this site. It is important to note that
the additional grading did not result from
any changes to the project, but rather came
about because of additional geological
information garnered from the EIR.
"The additional grading will not change the
surface land form alteration, but will serve
to make the upper campus safer. As regards
to the needlegrass, the amount of grass that
will be affected is no different from that
contained in the original long range plan.
"Denial on this basis does not make sense to me.
It is important to note all of the positive
things that Pepperdine has agreed to do in
order to address the environmentally sensitive
issues. Not only will 530 acres of the 830-
acre campus be designated as permanent open
space, the university has also agreed to
provide the funds to purchase 72 acres of an
environmentally sensitive habitat area for
the Santa Monica Mountains Conservancy, and
to allocate $75,000 to State Parks, either
for purchasing land containing valley needle-
grass, or for restoring the grass off site.
"I most respectfully request that you approve
the proposed amendment. I am confident
that the university would be more than

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TELEPHONE
(559) 683-8230
happy to continue to work with your staff
to develop modifications that you both can
live with.

"The concern for environmentally sensitive
habitat is certainly warranted. Perhaps the
university would agree to an on-site program
that would involve further restoration and
research on the needlegrass. As far as the
grading, the increase will only serve to
make the project safer, and that is a good
thing.

"I ask you to consider the importance of higher
education in this state, and how lucky we are
to have a university that operates with such
integrity right in our back yard. Pepperdine
is a good neighbor, an incredible resource,
and most importantly, a university that does
an excellent job at educating its students.
I am confident that, with your approval,
the university will do an even better job
of providing that education by adding graduate
programs, and thus being able to serve
additional students. Thank you very much
for your consideration. Assembly Member
Sheila James Kuehl."
CHAIR WAN: Thank you.

With that, I am going to call the university, Dr. Benton, and you have yourself, Lucinda Starrett, and David Davenport, Dr. Davenport, and you are requesting 25 minutes, is that correct?

MR. BENTON: And, we will try to be quicker than that, if we can, Madam Chair.

CHAIR WAN: Thank you.

MR. BENTON: Thank you very much, and good morning. My name is Andrew K. Benton. I serve as executive vice president at Pepperdine University, and our address is 24255 Pacific Coast Highway in Malibu, 90263.

It is with no small measure of excitement that we have reached this point after a long journey. Even now, however, as we approach this hearing today, we don't know exactly what to place in front of you, because after a long and intricate process, your staff recommends denial of our plan, and we, of course, respectfully disagree with that.

One school of thought is that we should go right to the two issues that they have raised: needlegrass, and grading. But, the problem with that, from our perspective, is that it allows those two issues to define the project, and we don't think that is right, or fair. And, so I am going to take some of the limited time that you have been kind enough to allocate to us this morning to tell you something about
Pepperdine University.

At Pepperdine University, we have decided not to do everything that there is to do in higher education, but to do well what we choose to undertake. We are not a leading research institution, but we are considered to have one of -- and in some cases, the very best school in the nation in certain areas, such as dispute resolution, organizational behavior, or in the foreign study opportunities that we offer to our students, and I name just those three.

We are proud that we rank 11th in the nation in the number of MBA degrees that we award to Hispanic and Latino students; and that we rank 16th in the nation for the number of masters degrees awarded to African American students in psychology; and, 2nd in the nation in the same category for Asian Americans; and that we rank 5th in the nation in the granting law degrees to Native Americans. I could go on with these statistics, but I won't.

I am here today to say to you that we are asking for your permission to proceed because we want to do our work better in the future than we have in the past.

The mystique of Malibu suggests affluence to some, but indeed 70 percent of all of our undergraduate students receive some significant form of financial aid, and indeed, 29 percent of our freshman students come from homes with household incomes of less than $50,000 a year. Our small
undergraduate school is ranked in the top 51 in the nation. We provide a diverse group of students with a remarkable education that we think is second to none, in terms of having a meaningful coastal zone experience. And, some day they graduate, and they move on, and they are forever changed from this experience.

As such, we probably bring to you a project slightly different than you see from some applicants. We have no profit motives. As a matter of fact, we operated at a significant deficit, on purpose, made up only by the gifts of others. We don't have any shareholders, just stakeholders, and many of them are here today, stakeholders in the future of this university.

I am teaching a course this term -- as a matter of fact some of my students are here today -- and I will tell them during the course of this study that I want them to make outlines, and then summaries of those outlines, and that eventually key words and phrases that must not be lost. And, the key word that must not be lost, as you consider our presentation today is the word "students."

[ Slide Presentation ]

Now, I am going to try to use the screen, and I hope that perhaps, if you can't see it clearly, that maybe you can avail yourselves of some of the monitors that are available.
I would like very much if we could be holding this hearing on our campus, so that you could know our students, and so that you could know our faculty, and get a sense for campus life, and the many co-curricular activities that they undertake.

One of the things that I want to point out to you is the great pride that we take in community service, and we try to imbue each and every student with the importance of making room in the course of their busy lives and careers for service. Every year in September, on a Saturday morning, 750 college students gather to inaugurate the service year at the university, and we call that "Step Forward Day". And, at a certain time they step forward for a day of service in the Malibu and surrounding community. And, it is not so much that they are merely menial tasks that they are undertaking, whether it picking up trash on the beach, or along Pacific Coast Highway, or scraping chewing gum off of playground surfaces at the elementary schools, the point is that they are reaching out and serving other people, and we want them to do that throughout their careers, and we believe they do.

A few words about the project, to augment what staff has already said, we have a project that is 50.4 acres in size, within the context of a 830-acre campus. We have set aside 550-acres of campus as open space, as an open space dedication.
What we are proposing in the graduate program is immediately adjacent to the core campus, which you know is important under the Coastal Act. All of the graduate campus components are situated below skyline ridges, and will not impact public viewshed impacts. Indeed, you can stand across Pacific Coast Highway from the university, and you can look straight ahead, and you can see the project. But, if you are driving along Pacific Coast Highway, it is visible for only six or seven seconds.

The architectural themes that we planned for this campus are entirely consistent with what you already see in place on the Malibu campus.

This is the project itself, made up of four separate parts. The top-most pad is for the graduate campus, itself, 95,500-square feet dedicated to serving three of our graduate programs, a permanent facility, if you will, for those graduate programs, for today they are served in modular, or temporary facilities, which are simply not ideal.

Graduate library facilities will also be provided, and conference and seminar facilities. The pad just next door to that one is for faculty staff housing, 58 faculty staff, single-family dwelling and condominium units.

We find that as we try to recruit a top faculty, that we can go to say a university like, Duke, and attract a biology professor, and offer her a salary that is interesting
to her, but when she comes to Southern California and finds out how expensive it is to live here, frequently, that means that she is unable to come. And, so, we have the practice of developing housing on campus, that provides affordable housing for a top faculty. That housing on campus also has the beneficial impact of reducing traffic to and from campus during prime drive times.

Just down from that facility, would be our student housing. The LRDP called for 144 units. We now believe we can do that with 96 units, providing beds for 300 additional students, taking traffic off of the roads, once again, in prime drive times, which we think is a good thing for the community, and a good thing for this project.

The lowest pad is what we call the academic support pad, providing some additional support facilities, as well as some needed academic space.

Many project benefits -- it would be easy this morning to focus primarily on the impacts, but I would like for you to think about some of the benefits, as well. The university is an educational and visitor-serving institution, a point that your own attorneys made with force in their advocacy on behalf of the Commission, and the university, when the LRDP approval was litigated in 1990.

Many enrichment programs, I had originally invited some faculty to come and speak today, and I wish you could
hear from them. And, I would be very happy if you could hear from some of those in our national science division, that take their classes outside of the buildings, and outside of the laboratories into the Santa Monica Mountains, and into the coastal waters, and into the streams, to study vegetation, plant ecology, and the conservation of coastal stream animals.

Many youth and community enrichment conferences are held on campus. I don't know the number -- 50, 75. One that I want to point out is Bay Watch Childrens Camp. We have worked with them for seven years, I believe, and believe it or not, there are young people living in the greater Los Angeles area, not more than 45 or 60 minutes from the beach who have never seen the ocean. And, through the Bay Watch Children's Camp they are brought to our campus and introduced to Malibu, and introduced to the coast. And, to many of them, 90 percent Ty Collins tells me, don't know how to swim when come to that camp, so we teach them to swim on our campus, and introduce them for the first time, often in their lives, to the coast, and we are proud of that association.

Planning approval has been a long-standing effort for us. We began with the County of Los Angeles in 1984, and conducted nine separate hearings. At the end of which, the County of Los Angeles, to the regional planning commission, to the board of supervisors, gave us approval for our Long
Range Plan for the campus, called the Development Program Zone.

We, then, complied with Public Resources Code Section 30605 which authorizes private and public institutions to prepare a Long Range Development Plan and we did so. And, we processed it through this Commission beginning in 1988, concluding with the final hearing in January of 1990, and with that you gave us our blue print for our future plans for the Malibu campus.

Since that time, we have raised a lot of money, worked with the accrediting agencies, alumni groups, students, faculty, staff, the many stakeholders that have interest in our future, and prepared a plan that was entirely consistent with what you have approved previously, and brought it back to Los Angeles County beginning in 1998, and conducted seven more hearings, at the end of which we had unanimous approval from the regional planning commission, and unanimous approval from the board of supervisors. And, we have taken that plan, and we now return to you today, to ask you for consideration for our graduate campus.

The Long Range Development Plan you have previously approved, it included the graduate campus that is virtually identical to what you see today. The Coastal Commission previously reduced the grading envelope from the impacted area, from about 100 acres to 72, relocated the
project to one site, instead of two, and reduced the square feet of the project by nearly 600,000-square feet.

The Commission has previously required us to dedicate an easement over 150 acres of the hiking trails, and to protect 530 -- that is actually 550 acres of campus property, and to increase the water tank capacity on the site, which benefits not only us, and not only our neighbors in Malibu Country Estates, but the whole of Malibu in times of difficulty.

On the left, you see the plan that you approved in 1990. In the right, you see the plan that we bring to you today, different only in detail, same number of square feet, same rough location, same position on campus.

We believe this plan is consistent with the LRDP. The grading footprint, we have further reduced from 72 acres to 50.4 acres, continuing to tighten the project to make it more compact. Same exact square footage, same uses in layout, same building heights, same number of parking spaces, same infrastructure.

The only differences are as follows: the County of Los Angeles, for safety purposes, has asked us to install a fire road that Ms. Carey properly identified on the map earlier. Also, for safety purposes -- we knew there was a landslide there. We thought we had done everything appropriate to determine the extent of it, but indeed, it
turned out to be deeper. Nevertheless, we dealt with it. We stayed in the same cut and fill, the same grading envelope. There is no import, there is no export of soil in the coastal zone. We are dealing with it on site, and we are going to render the project safer as a consequence.

Church facility becomes an academic support facility, and some detail changes, and slight reconfiguration of the graduate complex, but the square footages are just the same. We have added a park, that we call the recreation area here, in this slide. And, then finally we have shifted the water tank lower, which reduces grading, and shortens the access road.

That is a very quick, whirlwind tour of the university, and where we have been in the planning. I would like to call on Cindy Starrett of Latham and Watkins, to talk about our consistency with the Coastal Act.

Thank you.

MS. STARRETT: Good morning, Commissioners. I am Cindy Starrett, from Latham and Watkins, and I have been privileged to work with Pepperdine University for many years. In fact, I worked on the approval of this project, by the Commission, in the late 1980s.

Very little has changed since that time, and that is why we believe that this amendment needs to be approved by the Commission so the project can go forward.
Principles of equity and fairness, together with legal principles of justifiable reliance, and estoppel, require approval of this project. The Commission's findings, which were previously defended, and upheld by the court of appeal, remain applicable and remain binding on this amendment.

The Long Range Development Plan already answers the first key question: should the university be allowed a reasonable expansion into the undeveloped area of its campus? The Commission concluded that the university's expansion should be permitted, in order to remain competitive, the university must expand its facilities.

Staff said that their recommendation doesn't affect the lower campus at all. Staff misses the point, as we see it, which is that our Long Range Development Plan is an integrated project. It cannot be separated into discreet parts. We spent tens of millions of dollars implementing it. The housing in the upper campus services the students in the lower campus. This is one project. It allows our students to live and study on campus. We can't cut off an entire segment of the university.

The second question is whether there are alternatives available to this project? In exchange for the permission to build this project, the university was required to protect over 500 acres on the campus as undeveloped land.
That commitment has been made.

There is no no-project alternative. There is no reduced-project alternative, because there are no feasible alternatives that have less grading, or fewer environmental impacts.

The Commission found, on the LRDP, this alternative, as modified and approved is the least environmentally damaging alternative. It has mitigation measures to lessen the impacts to the extent feasible. The county reached that same conclusion in a more recent full environmental impact report.

The university should be allowed to expand into the upper campus. This is the best and only alternative to do that. So, where do we go from here?

Based on that decision in 1990, the university has reasonably proceeded to implement the Long Range Development Plan. It has complied with all of the Commission's requirements, and we appreciate staff's acknowledgement of how hard the university has worked with the staff, over the years.

Not only that has gone forward to other agencies, to the County of Los Angeles, the regional planning commission, the County of Los Angeles Board of Supervisors, they just approved the project unanimously. Permits have been issued by the Regional Water Quality Control Board, by the California Department of Fish and Game, by the Army Corps
of Engineers, by the U.S. Fish and Wildlife Service, all of these permits are based on the project as approved by the Long Range Development Plan; therefore, the project that we bring to you today -- we are processing a grading permit, and we are ready to go forward with this project.

That's why it was such a shock to us, of only two weeks ago -- and it has been a long two weeks, I think, for all of us -- to learn that staff advised that because of the increased depth of grading, and the recently decided Bolsa Chica case, our project should be disapproved.

We have responded in writing. We have put a lot of paper on your table, and we apologize for that. But, I would like to just summarize why we believe the project should go forward, and why the findings can be made under the Coastal Act.

First, the increased depth of grading does not alter the Commission's prior finding that the land form alteration of this project is consistent with the Coastal Act. The graduate campus site protects views to and along the ocean, and the scenic coastal areas. It was modified by the Commission to minimize land form alteration, and it protects the most sensitive, scenic and visual features on the rest of the 830-acre campus. That was the requirement that the Commission imposed.

The additional depth of grading does not change
the scenic and visual qualities, because it does not change the land form alteration. The elevations are the same. The pads are the same. The depth of grading merely increases the geotechnical stability, which is the next finding. We have shown you here, Section 30251, the project mitigates adverse visual impacts to the greatest extent feasible.

And, the Commission also found development under the LRDP will not cause instability on or off site. That also remains true today. The graduate campus assures stability and structural integrity. The increase depth of grading is only in one landslide. We knew the landslide was there previously. We have now gone down to bedrock underneath that landslide, and we are repairing it so that the project is completely safe.

The grading is still balanced on site. There is no import or export, and the Commission was advised by its geologist in 1989 and 1990 -- we have supplied to you some excerpts from the staff reports, and from the testimony -- that there could be additional grading required for landslide stabilization. There was a comprehensive review of this issue. It was overseen by Commission staff, and the County of Los Angeles is carefully scrutinizing this issue, as well, and did during the full EIR process.

The increase in quantities does not alter the Commission's ability to make the finding that the geological
stability of this project is consistent with the Coastal Act. That has not changed. This has been very extensively studied. Our geologists are here today. We look forward to responding to any questions you have on that issue.

The next issue, the needlegrass issue, we believe does not stop this project for four reasons. There are four different ways that you can approve this project. The first is that we believe this issue is not raised by our amendments before you.

The second issue is that there are no changed circumstances. The Commission knew about this grass in 1989, and nothing has changed since then with regard to this property.

Thirdly, if you believe that there should be more recent review, we have just had that in 1998 and 1999 by a number of agencies. This is not an ESHA, because it does not meet the criteria for an ESHA -- and I'll get into that.

And, then the fourth issue, and we will only reach that issue if you conclude that it is an ESHA, is because under the Coastal Act we need to balance and approve this project.

First, we believe the needlegrass issue is not reopened by our amendments, because none of our amendments change the location of this site. The increased depth of grading does not affect the impacts on the surface -- of
course, the needlegrass is on the surface.

In reviewing amendments to LRDPs, the Commission reviews those only to the extent necessary to achieve the goals of the Act, and the Coastal Act admonishes, "Don't diminish and abridge local authority in reviewing those amendments."

We ask you not to reopen the issue of the location of this site, based on our amendments, because that question is not posed by the amendments.

Secondly, the issue should not be reopened, because there is nothing new about this grass. We knew it was there then. In fact, staff, I think, recites in their report the needlegrass was identified. And, the finding that this project complies with Section 30240 remains valid. The Commission found -- and here is the section -- with a significant portion of the campus designated as undeveloped open space, or within an open space easement, the plan is consistent with the application of habitat policies. The Commission found specifically that this area was not an ESHA. We do not believe this issue should be reopened.

In the ensuing 10 years, many other agencies have reviewed this site. Neither this site, nor any other site with native grasses in Los Angeles County, have been designated as an ESHA. And, Los Angeles County has an environmental review board. It is charged with identifying
ESHAs. Three agencies on that board, the National Park Service, State Parks, the Santa Monica Mountains Conservancy, participated in the hearings on this project, discussed the needlegrass on this project. The mitigation they requested was funding for off-site acquisition of other property with needlegrass. None suggested that this site was an ESHA, and that is the responsibility of the ERB, under the Malibu Land Use Plan, is to suggest when an ESHA exists.

Nor did the Coastal Commission, which was a responsible agency, and received our EIR, even comment on our document, or participate in those two years of hearings before the county. And, that again is why this was such a shock to us for this issue to arise so recently.

We respect staff's position. In fact, I learned more this morning about why staff believes it is an ESHA, but we respectfully disagree. There is no substantial evidence before you to justify that this property is now an ESHA. We do not believe the definition of 30107.5 is met. Needlegrass is not rare. It is found throughout the Santa Monica Mountains, and up and down the coast. There are 740 acres of needlegrass in California. It is not included on lists of sensitive species, even by the California Native Plant Society, nor is it on the California Department of Fish and Game's special plant list.

The Malibu Land Use Plan identifies criteria for
an ESHA. They include riparian habitat, wetlands, oak
woodlands. Needlegrass is none of these. And, in fact, in
the recent RECAP the coastal staff issued in March of 1999 --
we cited this in our response to the staff report -- coastal
staff noted that not even all areas that have those specified
criteria, such as oak woodlands, would constitute ESHA. You
could have an oak woodland that, perhaps, might be
significant in some way, but unless there is substantial
evidence to show that it meets the Coastal Act definition, it
is not an ESHA.

Our EIR disclosed that this plant was something we
should mitigate, and we did. But, that does not mean that it
is an ESHA that should prohibit development on this site. We
do not believe that needlegrass has a special role in the
ecosystem, because there is no protected animal or plant
species dependent on it. These native grasses are mixed in
with the Mediterranean grasses. All the grass are used by
all of the species. None of them depend on the needlegrass.
It is not listed by the federal government, nor the state
government, as rare or endangered. Fish and Game does not
call it critical habitat, and the Commission has already
required significant mitigation for the project's impacts.
We are preserving eight other acres. We provided funding to
purchase 12 acres, that's 20. And, again, this is a tiny
percentage. There is a lot of needlegrass in California. It
is not rare, and it is not an ESHA.

We also believe that the Bolsa Chica case is very, very different from our situation, and I have given you in writing this chart, because I realize the lettering is fairly small here. But, Bolsa Chica was a situation where unlike ours there was process. The LCP identified an area as an ESHA. That hasn't happened here, as you know.

The LRDP, in our circumstance, designated other property as an ESHA, 150 acres, and specifically concluded that this area was not. In Bolsa Chica, there were 11 bird species --

CHAIR WAN: I just want to warn you that you have three minutes left to the 25 minutes, and you have a speaker after you.

MS. STARRETT: Thank you.

The distinctions between Bolsa Chica and our circumstance, we think, are very significant. We don't think the Bolsa Chica case controls here, and in any event Bolsa Chica acknowledges that balancing can occur. At Bolsa Chica there was no evidence in the record of competing interests, and the Commission did not engage in balancing.

If you conclude, and only if you conclude, that this property is an ESHA, then we ask the Commission to move to the balancing issue, and to consider the values of the Pepperdine project.
The Commission has already found that the university is a visitor-serving use, and we believe that that issue cannot be revisited.

Moreover, both the goals and the policies under Chapter 3 of this Act are served by approval of the Pepperdine project, of the graduate campus. The goals of education, the goals of social and economic benefits are served, but also conflicts can be resolved in a manner most protective of coastal resources because the expressed trade-off for development of 50 acres, is protection of 530.

The campus is located adjacent to the existing campus, as this section requires. There is public access, visitor-serving uses, and the project protects sensitive coastal areas, and sensitive resource values. In addition, we are donating another 72 acres off site.

As the Commission found in approving --

CHAIR WAN: There is less than one minute left.

MS. STARRETT: I would just like to ask Dr. Davenport to come up to the mike.

Thank you.

CHAIR WAN: And, you've got one minute.

MR. DAVENPORT: Fortunately, Dr. Davenport is a rapid speaker, and I would just like to say, in closing, perhaps we could place this in a slightly larger context.

One of the great challenges of moving a university
forward is bringing together all of the pieces required for a project like this one. In this case, we need to do extensive academic planning, which we have done over the last 15 or 20 years. We then needed to work with neighbors and community groups. We have had over 40 hearings and meetings with community groups in the last two years for this project. We had to raise extensive money, because we don't have state resources with which to build it. We have gone to donors and raised $30 million for this project. We have to do the architectural and building planning. We have spent $5 million doing that in the last 10 years, and then we have to work, as we have been doing carefully, with government.

I would just say in closing, that to bring all of those pieces forward, as we have done so carefully in recent years, when education is such a high priority of the state, when serving visitors is an important priority of the Coastal Act, when you have a university who by all accounts does both of those things extraordinarily well, and when we have no real alternatives for the graduate campus, to come to this stage, when the university has relied, and developed so carefully, and say that the project cannot go forward, strikes me as both unfair to the university, and really not a good approach to public policy.

So, we would encourage you to stay with your original approval for this project.
Thank you.

CHAIR WAN: Thank you.

Charles McCullough, followed by Jeremy Estrada, and you have two minutes to speak.

And, will you please, staff, keep track of the time.

MR. MC CULLOUGH: Thank you, Madam Chair. My name is Charles McCullough, and I am president of Student Government Association at Seaver College.

A university, but especially Pepperdine University, is an alma mater, knowing her children one by one. It is not a foundry, or a mint, or a tread mill.

The argument is not development versus the environment. The argument is not mitigation analysis versus impact. A university is people, my peers, a community, a family. That is the real argument. That is where the balance and the decision truly lies.

As I said before, I am currently a senior at Seaver College, into my second term as president of the Student Government Association. This morning, I come forward to say that my constituency, perhaps for the first time, is in agreement with the administration fully, who is seeking to provide the best for us, and in the best way possible.

Perhaps not in the same way, but a more complete way you understand, that -- but, back at Seaver, we
understand -- our administration has been working diligently by communicating and compromising in over 40 different meetings with community groups, and local government agencies. All of this was done to provide our tangible future, my peers, with the campus development that unites, educates, increases opportunity, and most importantly does so with as little impact as possible.

Now, there are some that may disagree with the measure, citing remote or obscure impacts, but I urge you to join my constituency and I in our belief that the benefits of this project do loom larger. You are in many ways voting not on just buildings, but on futures. I know it may sound strange, but as a pre-alum, me speaking so wistfully about this college, but I assure you there were no deals were made here, my grades are still just as average, and my loans are still just as high.

But, still in speaking of Pepperdine University, my personal dream factory, I often recall the words of Daniel Webster, when speaking of a college like ours --

CHAIR WAN: You are going to have to wind up.

Your two minutes are up.

MR. MC CULLOUGH: Yes, yes.

In much the same predicament, he said to the Justices of the Supreme Court, "She is a small college, but there are those that love her."
And, I am just saying to you, that in hearing all of this testimony, understand that and vote, "Yes".

CHAIR WAN: Jeremy Estrada, followed by Katy Baucum, and you have two minutes.

MR. ESTRADA: I will be brief, Madam Chair, and fellow Commissioners. Ladies and gentlemen of the Commission, you have heard a great deal of information regarding Pepperdine University, and I am not here to present some brilliant fact that will inspire the, "Aha, that is what we should do," instinct.

I am here, however, to ask a favor. When you make this decision, think of me, think of Charles, think of Katy, think of your grandchildren, and think of my daughter, because the reality is Pepperdine University provides opportunities.

This staff has asked us to separate between grading and the rules and the mitigation, between the goal of this project, however, it is impossible, because what we are talking about is we are talking about a university that takes chances, and does things for people that other universities do not.

I, myself, grew up in the Boyle Heights area of East Los Angeles, on welfare, and from the projects, and in and out of trouble, and in and out of trouble with the law, and college was unthinkable to me, because graduating high
school, itself, was an impossible feat. However, through
guidance, I graduated high school and went to a junior
college, and through one gentleman by the name of Wayne
Straum, and by the help of a man name Israel Rodriguez,
Pepperdine University was made available to me. And, my
voice quivers, and I get goose-bumps as I speak about it.

However, the reality is Pepperdine University has
enabled me to dream, to dream of going to medical school.
So, when you please make your decision today, don't look at
the details, we are adults here, we can deal with the
details. Think of the opportunities that we can provide.

Thank you very much.
CHAIR WAN: Thank you.
Katy Baucum, followed by Richard Hernandez.

MS. BAUCUM: Good afternoon, my name is Katy
Baucum, and I am a senior at Pepperdine University. It is an
honor for me to be here today. And, like my grandfather,
former county supervisor Kenneth Hahn, he graduated from
Pepperdine over 50 years ago, and my uncle, City Attorney
James Hahn, graduated from Seaver College, and also the law
school, and, I am anticipating graduation in April. It is an
honor for me to be here on behalf of Pepperdine, the school
that I love so much.

It has been good to my family. It has been good
to me. It is a remarkable place to learn, and to be
challenged. The opportunities to learn lie in abundance for every student. We are taught to live a life of service, and you have seen that through the presentations today, and the opportunity for students to serve others in our community, and the world around us.

Pepperdine provides a place for students to learn, and for students to become better citizens of the United States, and in the State of California.

My family has taken what they have learned from Pepperdine, and gone out into our city and have made it a better place.

I urge you to approve this project today, because it is going to create even more students, and more citizens who are going to better Los Angeles and the State of California.

Thank you.

CHAIR WAN: Richard Hernandez, followed by Terry Giles. You have two minutes.

MR. HERNANDEZ: Honorable members of the Commission, my name is Richard Hernandez. I am the chairman of the Hispanic Advisory Council for Pepperdine University.

Over the last few weeks, I have been discussing this issue with my daughter, who is a senior in high school, and an active environmentalist. She has visited the campus. She reviewed all of the issues. We have discussed it. And,
she assisted me in preparing my notes, and asked me if she could accompany me.

And, I am going to turn the mike over to my daughter, Reyna.

MS. HERNANDEZ: Hello, I am very honored to be here.

I take great pride in having the opportunity of speaking of behalf of this great institution. Over the last four years, my father has been working closely with Mr. Israel Rodriquez, Hispanic Affairs Director at Pepperdine, in its outreach program designed to identify and recruit Hispanic students to the school.

This commitment to create a more diverse and multi-cultural student body was initiated by the university, itself, and not because or due to any other influence, other than it was the right and correct thing to do.

My father has been impressed with the aggressive role the university has demonstrated in the recruitment and admission of Hispanic students from lower socio-economic backgrounds. Who would ever dream of attending a prestigious university such as Pepperdine?

The Hispanic Advisory Council --
CHAIR WAN: You have 30 seconds.

MS. HERNANDEZ: The Hispanic Advisory Council has been given, virtually, Carte Blanche in achieving this goal.
Ladies and gentlemen, what does this have to do with the issue at hand? My father views the campus of Pepperdine -- excuse me, when my father views the campus at Pepperdine, he does not just observe a gorgeous setting, of meticulously maintained grounds and buildings. He sees an institution that is offering so many young men and women an incredible opportunity to attend a university that will --

CHAIR WAN: Your two minutes are up, so you are going to have to wind up, thank you.

MS. HERNANDEZ: -- that will not only prepare them academically, but with an ethical and moral foundation, that is so vital and necessary in developing our leaders of tomorrow.

My father, knowing first hand, Pepperdine's reputation for integrity and sensitivity, he can assure that any and all environmental issues have been carefully studied, and have been carefully studied and --

CHAIR WAN: You do have to end now. It is not fair to others.

MS. HERNANDEZ: Excuse me.

Therefore, my father and I urge your support for the graduate campus project.

Thank you.

CHAIR WAN: Terry Giles, followed by Frederick Gebhardt, you have two minutes.
MR. GILES: Thank you. My name is Terry Giles. I am the Governor of California's appointee to the Tahoe Regional Planning Agency, sometimes called the Coastal Commission for Lake Tahoe.

You have before you today two issues. A geological issue, it sounds dramatic in the movement of a 1.5 million additional square feet of dirt, but when you actually look at the fact that it deals with the depth, and not the width, they have actually reduced their grading plan. They are simply going down deeper, in order to be safer.

Technology in the area of seismic moving and stability is always changing, constantly improving. Should Pepperdine ignore what they now know today could make this area stable, when they are simply talking about nothing that has to do with the surface going deeper, and stabilizing that environment. I would sincerely imagine that all of us would say that they have done the right thing in their research, their planning, their development, and the plan that they have come with -- the amendment that they have come forward with today.

The second issue is the biological. I think a lot of things have been brought up here, but most important is almost half of that site is going to remain untouched there, within that environment.

Pepperdine is there for the long run. This is not
a development that comes in, develops, sells off the land, and they are gone. They are going to be there for decades, maybe hundreds of years.

I would suggest that the needlegrass environments that remain at Pepperdine will be the most well protected needlegrass areas in the State of California when they are finished. In addition to that, they are giving 72 acres of land, and the money to the State Parks to develop other needlegrass sites there in Malibu Canyon.

I would finish by just saying that there is an extraordinary convergence of groups and interests that come in support of Pepperdine, the educational, the environment, the communal, even the political.

History, two decades they have proved themselves as a worthy member of the coastal community, in tune with the concerns and interests of those around them --

CHAIR WAN: You are going to have to wind up.

MR. GILES: -- from the citizens and their neighbors, to the flora and fauna, that surround them.

Thank you.

CHAIR WAN: Thank you.

Frederick Gebhardt, you have two minutes.

MR. BENTON: Actually, Madam Chair, Andy Benton for the record, again.

Mr. Gebhardt is one of our consultants. He is
He is merely prepared to respond to questions.

CHAIR WAN: Okay, I didn't realize that. It didn't say that. Okay, thank you.

That is going to bring us to the opponents, and they have given me an order of speaking, and I will call Greg Aftergood, first. You have five minutes.

MR. AFTERGOOD: Thank you, Chair Wan. My name is Greg Aftergood. I have been representing the Malibu Road Property Owners Association for roughly 20 years now, and most of my time over that period has been dealing with Pepperdine University, its development plans, and its operations.

Pepperdine wants to enlarge its campus right now, and the question before us is simple and straightforward: is this expansion consistent with the legislative mandates imposed under the Coastal Act?

I have reviewed countless Commission staff reports over the years, but I have never read a more thorough and well reasoned analysis than that contained in the staff report for this proposal. Drawing upon incontrovertible evidence, the expressed provisions of the applicable statutes, and prevailing California case authority, your staff provides compelling, legal, and logical authority for denial of this proposal.

I certainly had the pleasure of knowing a number
of top-notch people at the university over the years, both 
professionally and socially. I hold Dr. Benton in high 
estee, and consider him a friend, even though we have 
certainly not seen eye-to-eye on certain issues relating to 
the campus.

And, we know that Pepperdine has a great number of 
friends, such as Sheila Kuehl, and Supervisor Yaroslavsky, 
but friendship is not the yardstick by which development 
project are to be measured.

And, we can't summarily ignore evidence, and legal 
authority, no matter how much one wants to assist the 
university in its expansion goals. Precedent is an important 
element of our legal system, and it certainly stands very 
importantly, in terms of this Commission's decision-making 
process.

It would be a sad day, indeed, if violations of 
the Coastal Act, posed by this proposal, are sanctioned, 
while other applicants are held to the strict letter of the 
statutory enactment.

For the reasons enunciated by your staff report, I 
submit it is impossible to reconcile the project with the 
provisions of California law, given the massive amounts of 
grading, 1.5 million cubic yards is not something we can 
summarily ignore.

And, moreover, as your staff points out, the
actual amount of grading will no doubt increase once they are actually excavating the site. That is what happens all of the time.

The destruction of an ESHA for non-resource dependent uses is equally impermissible, given the provisions of Section 30240, and the case holding in Bolsa Chica.

Now, counsel for Pepperdine argues that an estoppel should apply to you, that you can't consider this new information, that you should give Carte Blanche to the changes in the project simply because you approved something similar 10 years ago. I submit that is not the standard under the law.

If the consequences of this project were the same, a supplemental EIR would not have been required. The preparation of the new EIR brings new points to this Commission, and those new points deserve the same kind of merit as if they were brought to this Commission 10 years ago. There is no vested rights applicable to this, as well, under prevailing California law. The necessary permits, building permits, and construction activities have not been started.

There will always be consultants who will opine that the impacts and hazards proposed by a proposal can be dismissed through mitigation, but perhaps some of you might have read the L.A. Times article at the beginning of the
year, which assessed how prudent development in the Santa
Monica Mountains over the past two decades, in areas such as
this, which are plagued by fire, flood, and geologic hazards,
have all too often resulted in tragic adverse consequences
despite well intentioned mitigation measures, and 20/20
hindsight is then too late.

And, we certainly cannot forget the fact that the
losses that are experienced by these disasters cannot simply
be measured in dollars and cents. There are places which
simply should not be developed, and I submit that
Pepperdine's upper campus area is one of those places, as sad
as it might be.

The staff's analysis is comprehensive, and
carefully crafted. Feasibly alternatives do exist,
infiltration could be an option, and of course there is the
possible use of a different site across the street.

We urge you to move per staff, and adopt the
recommendation of denial. Thank you.

CHAIR WAN: Thank you.

Mark Massara. Mr. Massara, you have five minutes.

MR. MASSARA: Thank you, Madam Chair. I am Mark
Massara. I represent the Sierra Club's Coastal Program, and
our 70,000-member Angeles Chapter.

And, we join in staff, and most every homeowner's
association group, and environmental organizations for nearly
50 miles surrounding this project in urging you to deny.

Here we have a proposal of 4.5 million cubic yards of grading. Certainly one of the largest strip-grading proposals ever submitted to this Commission. To justify the project, Pepperdine claims reliance on an old plan, and that equity here should allow them to go forward.

We would urge you to consider equity for all of the other property owners in the California coastal zone, who are forced to reconcile and protect ESHA, protect red-legged frogs, protect snowy plovers, to protect Monarch butterflies, and least terns.

I suggest that for a glimpse of this project, you take a look at the pictures of the Irvine Company's grading in Newport Beach, adjacent to the Crystal Cove property, in order to understand the size and scope of the grading that will occur here -- only here, it is in the disaster prone Santa Monica Mountains. And, for what? For all of the loss, the university gets a couple of hundred dorm rooms, a couple of graduate buildings, and 1300 parking spaces. In all, 468 new students will be accommodated. Do the math, Commissioners, That is 10,000 cubic yards of grading for each student. You would not allow this for any other use. It is off of the equity chart. No amount of education can justify that habitat destruction. And, it is obvious that these developments, and benefits, can be accommodated and
accomplished elsewhere, without the need to permanent
disfigure the coastal zone.

A long list of less environmentally damaging
alternatives has been examined, and at what costs will these
benefits be obtained? ESHA is clearly the show-stopper here.
It is the key word, if you like. The upper campus area
happens to contain unusually rare and important native
grasses in unusually high densities. These native grasses,
and pristine coastal sage scrub habitats support an intensely
diverse and dense wildlife population. The staff report is
conclusive that this area is rare and endangered ESHA.

Your biologist, John Dixon, has just told you, I
believe, that based on his research and consultation this is
the single best example of coastal native grasslands left in
existence. Unfortunately, page 21 of the staff report
concludes that the LRPD, as proposed, will result in a
complete loss of all habitat areas from the entire 50.4-acre
upper campus site. That is a quote, everything -- a complete
and total take.

In the end, the question is not whether the
project is consistent with the old LRPD, but whether it is
consistent with the law today, regarding protection of ESHA
native grasses, which it certainly is not, by any measure.

Unfortunately, the applicant and their lawyers,
haven't even attempted to accommodate the law, or the ESHA.
They don't even attempt to mitigate the entire loss of the ESHA. Instead, they invoke the now discredited tradeoff language that has been judicially rejected.

No matter how great Pepperdine claims this project to be, no matter how many Nobel Prizes may result, or dreams that may be accommodated by this project, it must be denied. And, Pepperdine must be given another opportunity to pursue these dorm rooms and parking lots without this destruction.

Let's dispel the notion that dreams and the university itself will be destroyed by denial here today. In fact, Pepperdine will be given the opportunity to shepherd nature, as well as students. Any other result will destroy ancient, nearly distinct grasslands, that cannot ever be restored or recreated. We urge your denial.

Thank you.

CHAIR WAN: Thank you.

Pat Healy, and you have five minutes.

MS. HEALY: Good afternoon, Commissioners. I am Pat Healy, speaking on behalf of the Malibu Coalition for Slow Growth, and some of those who couldn't be here today. Most of Malibu doesn't even know this hearing is taking place. It was over a 3-day holiday weekend that a small portion of the community first learned of this amendment, and gave up part of their holiday to comment. There are letters from the Malibu Coalition for Slow Growth, the Sierra Club...
Angeles Chapter, and Santa Monica Mountains Chapter, Wetlands Action Network, Malibu Coastal Land Conservancy, Save Our Coast, Malibu Township Council, and 13 homeowner associations, which include the following: Baylord Properties, Lachuza Cove, Malibu Encinal, Malibu Knolls, Malibu Park, Malibu West, Point Dume, Ramirez Canyon, Serra Canyon, Trancas Properties Association, which is Broad Beach, Upper Mesa, Zuma Mesa, and Malibu Road.

As the Malibu West Homeowners Association stated -- and I think you should look at your Exhibit 2 -- that it indicates that the upper campus creates a risk to life and property in a high fire area, in violation of Section 30253. This fire issue needs the Commissioners' attention, for when L.A. County Fire Department approves a project, they are saying that they can come and defend a structure fire, never a wildfire.

Since L.A. County is totally irresponsible in this area, the Commission should look at the escape route. There is a figure eight that the fire department required, but there is only one escape route from this project, and this, since it is a high risk to property and life, is a violation of the Coastal Act.

The Baylord Road Property Owners, point out that the development plan cannot be built outside of the original graded area, unless all of the impacts of the LRDP can be
fully mitigated, consistent with all of the policies of the LCP. Clearly, this cannot be done.

The 1.5-million cubic yards of grading was not known when this project was previously approved. This is new information, and changed circumstances that warrant denial.

Spread throughout this site is needlegrass, creating an ESHA, and therefore it must be protected. The proposed campus is not a resource dependent use, as required under Section 30240.

Another changed circumstances is the Bolsa Chica decision, where the Court of Appeals determined that you cannot destroy an ESHA, even if there is off-site mitigation, for such intangibles cannot be moved from place to place.

Other important threatened plant and animal species need protection, and are endangered by this project. As Save Our Coast said, the land is already occupied by the wildlife.

Pepperdine has other choices for this campus. As Ramey O'Neil states in her letter, the Coastal Act seeks to protect the environment, which supports life for all of us, and each of you are entrusted to uphold this Act. As we enter the new millennium, we must learn to protect the multiplicity of species, and their habitats, as an integral part of the web of life, for our very survival depends on it.

Thank you.
CHAIR WAN: Ken Kearsley.

MR. KEARSLEY: You've got it right.

CHAIR WAN: Okay.

MR. KEARSLEY: Thank you.

CHAIR WAN: Five minutes.

MR. KEARSLEY: Madam Chairman, Commissioners, friends from Malibu, and neighbors.

I, too, am an educator. I have taught school for 30 years, and I know the importance of a campus like Pepperdine; however, my organization, Save Our Coast, believes that the amendment is not productive to the environment. In fact, I will postulate with you, that it has nothing to do with Pepperdine. It has to do with your charge under the Coastal Act to protect the environment. Pepperdine is strictly an adjunct, is a resident there, for the 200 to 300 students who could be put elsewhere on campus -- or even in South Central Los Angeles -- I think that fine school of education would serve well in South Central Los Angeles, the graduate school.

What we need is to protect the wildlife, the biota of that campus, and of those mountains. With 4.5-million square cubic feet, I really have a hard time fathoming what 4.5-million cubic feet was. When I was a child, I remember I thought, what do a million marshmallows look like?

I did a little homework, because I am a teacher.
The great pyramid in Agiza, Coohoos, [sic.] is 3.4 million cubic yards. That is 900,000 yards less than the project. The EIR states the total vertical, successive, manufactured slopes, the grading would be 530 feet. The pyramid's total height is 481 feet. And, I want to tell you something, the only two objects that can be seen from space, by the naked eye, is the pyramid, the great pyramid, and the great wall.

How about the Empire State Building, 1,700,000 cubic yards. That is three Empire State buildings. So, under this you could take three Empire State Building, and one great pyramid, and you could still put up a sign, "Free Dirt, Help Yourself."

Now, to end this on a more serious note, we had some trials in Los Angeles. First, was the first trial of Rodney King. The second trial was O.J. Simpson. And, the lawyers had the audacity to ask those juries to ignore the law and the facts. And, that is what you are being asked. You are being asked to ignore the Coastal Act, and the facts that those ESHAs have to be protected.

Thank you.

CHAIR WAN: Debbie DeCray, you have five minutes.

MS. DECRAY: I am Debbie DeCray, and I am speaking on behalf of the Malibu Coalition for Slow Growth. And, you have a letter from us in there, and I just want to bring to your attention a couple of things from that.
Several of the legislators, and the representatives, have indicated that the City of Malibu did not oppose this project, and you may ask, why the City of Malibu has not opposed this project? Well, we looked into the records, and took the opportunity to review the city council's minutes of April 26 meeting. The city agreed not to oppose this project, in exchange for amenities, because they were told that the board of supervisors was going to approve this project, and told by the city planner, Craig Ewing, that the Coastal Commission action was a ministerial act. That means that it wouldn't come to public hearings, so they wouldn't have any say anyway.

There was a video tape of the meeting, which indicates that the city planner -- which was Craig Ewing -- stated that Jack Ainsworth, from the Coastal Commission, had told him this fact, that it was a ministerial act.

Now, I suspect that this is the case which also the National Park Service, and the State Parks, that they were told the same thing, so they went in and got what they could get, because they couldn't be heard otherwise.

So, we ask you to really pay particular attention, and listen to the facts. This is an extremely horrendous project, and there are other ways for the development to be done on the existing campus. I have been there. I go by it all of the time. There is plenty of open space, still on the
existing grading campus to locate these buildings.

    Thank you very much.

CHAIR WAN: I am now going to go to the two-minute speakers.

    Steve Streeter, you have two minutes, followed by Melanie Godzwaard.

MR. STREETER: Yes, good afternoon, my name is Steve Streeter, from the Malibu Township Council. I have been asked to read a letter from David Cagen, who can't be here today, due to ill health.

"Dear Commissioners. As a member of the board of directors, and the immediate past-co-president of the Malibu Township Council, I have been requested by the MTC board of directors to express its opposition to the Pepperdine University proposed Major Amendment 1-99 to the Pepperdine Long Range Development Plan.

For more than 50 years, the MTC, a voluntary organization consisting of several hundred and sometimes thousands -- depending on the issue -- concerned Malibu residents, and property owners, has been at the forefront in supporting the highest and strictest standards for the purpose of protecting our fragile environment ecosystem, and a standard of living for our residents, as well as those who visit Malibu, of which the State of California and the nation can be proud.
We join in commending the Commission staff in presenting its findings and conclusions in a totally objective manner, without regards to the identity and political leverage of the applicant. That is the way it should be. In these days of growing cynicism about the integrity of government at all levels, your staff has fully and admirably discharged its responsibility to the Coastal Commission and the people of the State of California, by rendering an unbiased opinion, predicated on the facts of the laws applicable thereto.

It is a refreshing reaffirmation of one of our most precious and sacred legacies, that we are all equal under the law, regardless of our financial, social, or political stations.

In view of your staff's findings and conclusion, can anyone seriously contend that Pepperdine's proposed amendment would be approved if the applicants were the average Jane or John Doe? You are being asked by Pepperdine, notwithstanding your oath of office, to uphold the laws of the State of California, and regardless of its precedential consequences, and the affects on the reputation of your office on the Coastal Commission, to approve an amendment totally unsupportable by the facts --

CHAIR WAN: Your time --

MR. STREETER: -- and law --
CHAIR WAN: -- you time is up. You are going to have to wind up.

MR. STREETER: The amendment should be denied.
Thank you.

CHAIR WAN: Melanie Godzwaard, followed by Georgia McBurney.

MS. GODZWAARD: Thank you, Madam Chair. That was actually pretty good. My name is Melanie Godzwaard. I am president of the Malibu Road Property Owners Association. I represent 200 homeowners, and 10 other board members, and we are unanimously opposed to this project.

We accept that Pepperdine is powerful, and politically very well connected. We don't have politicians here on our side of the fence. We think it is a shame this has become a political issue, because we think it should have been an environmental one, and nothing else.

I would like to say that I have nothing against Pepperdine. I actually love the place. I would love to send my kids there. I got married in that beautiful chapel. My husband has been a university professor for over 30 years, so I fully appreciate the benefits of higher education, as well.

This is not a political issue. This is an environmental issue, and nothing else. The Coastal Commission exists to protect our coastline and our mountains, not to destroy them. You have a duty to adhere to the
Coastal Act and not to buckle under to the political pressure that you face today. You must focus strictly on the issue before you, and address the impact the extra grading will have on the environment, and the Santa Monica Mountains.

I put it to you, that to permit development and excessive grading in an ESHA is unheard of, and would be a dangerous precedent to set. Your own staff recommends this project be denied. Their staff report is long and detailed. I am not going to go into that now. I urge you to support it, and reject this motion.

Pepperdine, in my opinion, is trying to make a square peg fit into a round hole. The whole project is not going to work for them in that location. They need to find an alternative location. There are others within Malibu, within the same area. I urge them to do that. Please support your staff report, and reject them.

Thank you.

CHAIR WAN: Georgia McBurney, that is the last speaker.

MS. MC BURNEY: In that case, I'd better make it good, huh? My name is Georgianna McBurney. My main credential is I am a citizen. I am also a member of a homeowners association of 17 homes, that exists in Winter Canyon, which makes me a neighbor of Pepperdine. And, I see that most of my neighbors are here today.
My main interest, having taken up the activities of my husband, is to continue that, and that is to say that there are other visions first, before us, just in the vision, and in the very admirable vision that Pepperdine has come up with.

The main vision that my husband and I held, and the speakers that you have listened to have held, is that the concern and the dedication that the next generation will know the same heritage that was given to us, and that is that beautiful coastline of 27 miles, along the sea, in which the mountains hauntingly come down to touch it. It is a rare natural treasure. Let me say it is a national treasure that is unduplicated.

I am here to ask today for you to deny Pepperdine's request to increase their grading by 50 percent. One of the school's arguments is the necessity to stabilize geologically sensitive ground. The request for more grading would indicate the architects didn't realize the land was so geologically unstable. That is interesting, because the Santa Monica Mountains, and their fragility, are such common knowledge, I would surmise most courts would --

CHAIR WAN: Your two minutes are up. You are going to have to wind up.

MS. MC BURNEY: Really?

CHAIR WAN: Yes --
MS. MC BURNEY: All right.
CHAIR WAN: -- I am afraid so.
MS. MC BURNEY: Can I have one sentence?
CHAIR WAN: One sentence, yes.
MS. MC BURNEY: And, that is, I would ask that Pepperdine, being a citizen like the rest of us, revise its plans to be more environmentally favorable, and to join with us to maintain that heritage for the coming generations.
CHAIR WAN: Thank you.
Now, although Pepperdine has used up all their time, I will give you three minutes for rebuttal. So, you can pick who you want.
MR. BENTON: I'll use my time wisely, Madam Chair. For the record, Andy Benton, once again.
Well, I have met a lot of new people here today, that I had not had the pleasure of knowing in Malibu before. Mr. Aftergood is right, the precedent is very important, and so is Ms. McBurney. We are planning many years ahead for students that we haven't even met yet. And the purpose of this Long Range Development Plan, provided for us in the Coastal Act, is to plan for the students, and not to engage in piecemeal planning.
One of the things that we heard after we received approval in 1989, was that we had better go out and build that project, because we will never have an opportunity to do
It. We didn't do that. We were methodical and we were careful in our planning, and I feel like in some respects we are paying a price for that today.

It is an old plan, Mr. Massara is right, but it is a plan that constrains us, and we have felt and acted in the last ten years as if that plan did constrain us, and it told us what we could and what we couldn't do. That same plan that constrains us is a plan that ought to enable us, I believe.

I appreciated hearing from some of these homeowners groups that, frankly, I have not heard from at any point in the process. I have a letter, just a piece of which I would like to read, from our nearest neighbors in Malibu, Country Estates.

If I can find the entry.

CHAIR WAN: I think that is in our packet --

MR. BENTON: All right.

CHAIR WAN: -- and I know I have read it, so.

MR. BENTON: And, to paraphrase it, they say if anybody in Malibu is going to be concerned about this project, it would be Malibu Country Estates, and we are not.

There are other things that I would like to say, but I think I had better leave the last 45 seconds, or so, for Ms. Starrett, at least.

MS. STARRETT: We are asking you to approve this
project because we believe it is consistent with the Coastal Act.

A number of those who commented said that we were asking you to ignore the law. We are not. We believe the law was complied with, with the LRDP. The law should be complied with by approving this Long Range Development Plan. These issues have been not changed. We are a visitor-serving use. The impacts on grass have not changed. The amendments don't reopen this issue.

The sole question, we believe, that is legitimately a question, is the geological stability, and that, we believe, remains valid. We ask you to approve the project as it was approved previously, approve this amendment to the LRDP.

CHAIR WAN: Thank you.

With that, I am going to close the public hearing, and return to staff.

CHIEF DEPUTY DIRECTOR DAMM: Thank you, Madam Chair. Staff has several comments to make.

First of all, just so there is no misunderstandings, with regards to the acreages, the Pepperdine University campus consists of 830 acres. What is referred to as the developed, or lower campus, is 230 acres, and that -- as I said earlier -- remains unchanged. That is not before you today as part of the amendment. What you hearing the
discussion today is on the 50-acre expansion, or upper campus area. There is then some 550 acres that is designated as open space.

Staff feels, in the almost 10 years since the Long Range Development Plan was approved, that changes have occurred. The severity of the geologic hazard has become much more apparent, and that is why some 1.5 million cubic yards of additional grading is required to remediate the site.

And, with regards to the question of the native grasslands, that those essentially were not even discussed 10 years ago when the Commission took action. We have a biologic report that was submitted at that time. It is a narrative of some five pages, with a few tables attached to it, and I just want to read one short paragraph that it concludes with, and it states:

"While the vegetation in the study area seemed to represent a variety of types and conditions, none of these are unique with regards to the surrounding area."

That, from the staff's standpoint, is why we are recommending denial, as to the issue of environmentally sensitive habitat. It wasn't dealt with 10 years ago, as to the native grasslands. In the environmental impact report, that was submitted with the current amendment, the
significance and extent of those grasslands was described in
detail, and certainly, in staff's opinion, those native
grasslands, the needlegrass constitutes environmentally
sensitive area as defined in the Coastal Act. And, if you
have any questions on that, John Dixon, the staff biologist,
is here to answer those questions.

I want to emphasize that the staff is not somehow
trying to simply revisit issues that were discussed 10 years
ago. The basis for our recommendation of denial is that
Section 30240 and 30253 dictate, in our opinion, that the
expansion, the 50-acre expansion area, is not appropriate for
approval under the Coastal Act.

That would conclude my comments.

I don't know if the Director has --

EXECUTIVE DIRECTOR DOUGLAS: No.

CHIEF DEPUTY DIRECTOR DAMM: -- that concludes the
staff's comments, except to answer any questions.

CHAIR WAN: All right.

I have had a request by a Commissioner, because
there are a number of legal issues, and there is a likelihood
of litigation, that we have an executive session on the legal
aspects of this, and our legal questions.

However, before we go to that closed session, I
will take, if Commissioners want, some very pointed
questions, just specific questions of staff. I don't want to
get into the discussion now, at this point, but if you have specific questions, I will take them.

Mr. Douglas.

EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, just a question on logistics.

As you know, the city has provided a caterer for lunch. It is hot lunch. It has been there for 1:15 minutes, and is probably cold by now, but in any event, I would like to kind of know what your plans are? My suggestion would be that -- and you have three public speakers, public comments, before you break for lunch -- my suggestion would be that the Commission go into closed session, or come back and do the closed session after lunch, whenever you break for that.

CHAIR WAN: I am going to take some suggestions from my Commissioners, as to whether you feel you want to break for lunch before we go into our deliberations? or you want to continue our deliberations, and just keep going.

COMMISSIONER FLEMMING: Yes.

COMMISSIONER ORR: Let's keep going.

CHAIR WAN: Okay.

COMMISSIONER FLEMMING: Well, excuse me, Madam Chair. Why could we not eat our lunch in the closed session, and have the closed session in the back room?

EXECUTIVE DIRECTOR DOUGLAS: It is all set up in the room down across the complex.
CHAIR WAN: Yes, it is in the room down -- remember last year.

COMMISSIONER FLEMMING: Oh, yes.

CHAIR WAN: Okay, I think the Commission is willing, in lieu of the public that is here, to simply ruin our lunch, and just push right through. So, I think that that is what we are going to do.

I am going to take a couple of very short pointed questions. Commissioner Kruer, and then Commissioner Dettloff, have them.

Anyone else?

[ No Response ]

And, I have one.

COMMISSIONER KRUER: Just a question for Chuck, maybe.

In reviewing the grading plans, of what was approved over 10 years ago, and what it is today, as far as the remedial grading, there weren't any lateral movement of the grading, itself, and 750,000 yards of cut and fill, why do you believe that that is an appropriate measure, when it doesn't change the previous plan, grading plan, that was done some years ago?

And, number two, as you look at that particular landslide, QE-6, that travels 1500 feet down, and 1000 feet wide, that 70- to 90-feet different, why do you think -- the
second part of that question is why wouldn't that, in fact, under the Coastal Act make the project more stable for development, and certainly the lower project that is already developed? because the landslide is right above it.

CHAIR WAN: Mr. Damm.

CHIEF DEPUTY DIRECTOR DAMM: I wasn't sure you were wanting response now, or a little later.

CHAIR WAN: Yes, we do want that. I just don't want to get into discussion, at this point.

CHIEF DEPUTY DIRECTOR DAMM: Okay.

Commissioner, the staff is not disagreeing with the university that, essentially, when the grading is all complete, it is nearly identical to what was approved 10 years ago. We have never, never disputed that.

Our concern is that under Section 30253 of the Coastal Act it indicates that you should not be approving development when you find that development to be in hazardous areas. Ten years ago, this was known to be mountain land, steep terrain, that had hazards associated with it, in the form of landslides. The staff, at this point, simply feels that the degree of hazard has been exacerbated, in that they are now going to have to dig up much more dirt, because there was a deeper landslide than was known 10 years ago.

Certainly, you can make the argument that when the grading and work is completed, that by doing this it will be
a more stable site than if you had graded it as proposed 10 years ago. There is no argument about that. Staff's position is avoidance is the better way to go.

CHAIR WAN: Commissioner Dettloff.

CHIEF DEPUTY DIRECTOR DAMM: I am not sure I answered the second part of your question.

COMMISSIONER KRUEER: No, but that is okay, we won't get into it at this time.

COMMISSIONER DETTLOFF: Along the same lines -- and this is either through reading the transcripts, and if that hasn't been done just state that, and we won't go any further with the questions -- but I am wondering what the Commission, during the 1990 hearings, I think it has been stated that there would be additional studies done, as far as the requirements for grading, that you knew there were some geological problems. Did you pick up from any of the old transcripts what the Commission thought would be done in this interim period, and what that might lead to, and what did they determine would be the best course of action, if something like this has occurred, that there would be additional work required?

CHIEF DEPUTY DIRECTOR DAMM: In reading the transcript from that hearing, there was a large amount of discussion regarding geologic hazards, and the amount of grading associated with the geologic hazards.
And, certainly, there was discussion that there could well be more grading required than the 3 million cubic yards that the university was suggesting at that time. The means to resolve that certainly would be that the university would come back, just as they have, with a Long Range Development Plan amendment to deal with that situation.

What concerns the staff is the degree, or severity of the hazard, and the amount of additional excavation that is required in order to remediate and stabilize the site. Certainly, no one 10 years ago knew whether or not there was going to have to be additional grading, because in reading the transcript there was testimony, you know, "We are very certain that 3 million yards is all we are going to need."

And, then a little later on, you read in the transcript, "Well, there might be more grading required."

So, the means to resolve that is to come back to the Commission, and the university is doing that.

Again, it is the question of degree and severity, and staff concluded that it is best not to build in an area that has that type of landslide, and that type of remediation required in order stabilize the site.

COMMISSIONER DETTLOFF: You also acknowledge that there was a discussion on the needlegrass at that time. Was there any discussion of how that acknowledgement that there was this species on the site, what should be done with it?
how expanded? because I think this all leads into we are making a decision, really, based on some decisions that were made earlier. They acknowledged it, and then what was the final decision, as to its importance on the project site, which they went on to approve?

CHIEF DEPUTY DIRECTOR DAMM: Commissioner, in reading the transcript, I did not really see where the Commission did any discussion of the question of the native grasslands, or the needlegrass, and the significance of that from an environmental standpoint. I did not come across any discussion of that sort.

COMMISSIONER DETTLOFF: Do you have a current position, a status position, from Fish and Game, as to how they regard this specific area on the campus?

CHIEF DEPUTY DIRECTOR DAMM: The Department of Fish and Game, at this point, the only thing we have is a 160 -- it is either a 1601 or 1603 streamline alteration agreement. We do not have information from the Department of Fish and Game as to the grasslands.

CHAIR WAN: Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: I want to go back to the geologic issues for a moment, because I want to clarify staff's position, with respect to its concern in that regard.

Are you indicating that your concern goes to the magnitude of grading necessary to provide remediation? or are
you indicating that you are concerned that after remediation we have still got -- we can't assure adequate safety?

CHIEF DEPUTY DIRECTOR DAMM: The staff's position, Commissioner, is that the geologic hazard that is present, is indicated by the amount of grading and remediation work that has got to be done in order to stabilize the site.

And, in our opinion, that geologic hazard is clearly greater, significantly greater, than what was thought when the Commission acted on the Long Range Development Plan --

COMMISSIONER MC CLAIN-HILL: And, on what --

CHIEF DEPUTY DIRECTOR DAMM: -- 10 years ago.

COMMISSIONER MC CLAIN-HILL: -- do you base your opinion that it is significantly greater? because it seems to me reasonably clear from the record, that at the time that the plan was approved, there was not only a recognition that there was a hazard, but a recognition that the work necessary to remediate that hazard may not have been completely defined at that time?

So, could you tell me what the basis for your conclusion that the hazard is significantly greater today than it was at that time, is? And, also, and finally, what information do you have from the applicant on this issue?

CHIEF DEPUTY DIRECTOR DAMM: I am sorry, I didn't hear you?
COMMISSIONER MC CLAIN-HILL: What information do you have from the applicant that addresses this issue?

CHIEF DEPUTY DIRECTOR DAMM: On the last point, the applicant has provided a great deal of information regarding geologic hazards associated with the property, as well as the proposed remediation.

As to your first question, the applicant, for fire safety purposes, needed to put in an additional loop road for fire equipment servicing this site. As part of that, they did additional borings, and in doing those borings it was discovered that there was a much deeper landslide plane, than was known at the time the Commission approved the Long Range Development Plan 10 years ago. It is that much deeper landslide plane that is requiring them to have to excavate the additional material, in order to stabilize the site, and that is also the reason that the staff concluded that the hazard is significantly greater than what was known 10 years ago.

COMMISSIONER MC CLAIN-HILL: With respect to the plan, the remediation plan, does staff have a view?

CHIEF DEPUTY DIRECTOR DAMM: As far as the actual remediation plan, I think the university has done a good job of coming up with a remediation plan, if development is to occur in the expansion area, that it is done in a way that is, to the best of their knowledge, going to result in safe
construction, and safe use of the buildings.

CHAIR WAN: Does that answer your questions?

COMMISSIONER MC CLAIN-HILL: I just want to be clear, that is the staff's view?

CHIEF DEPUTY DIRECTOR DAMM: If the site is to be developed, yes. The university has done a great -- there is no question they have done a lot of geologic work.

CHAIR WAN: Commissioner Allgood. Again, let's --

COMMISSIONER ALLGOOD: Just one question --

CHAIR WAN: -- just have points of clarification here.

COMMISSIONER ALLGOOD: -- is there further expansion planned after this upper campus development? is that in the Long Range Plan?

CHIEF DEPUTY DIRECTOR DAMM: It is not in the Long Range Development Plan, at this time.

COMMISSIONER ALLGOOD: Okay.

CHAIR WAN: That is basically my question, is that the 550 acres that are set aside, are set aside simply not in perpetuity, am I correct? they are simply, that is an open space zoning, which if I remember the original hearing, the university specifically said that at some point in the future they might be able to come -- they would have to come back to the Commission, but they would have the ability, it is not in perpetuity, it is open space zoning, is that correct?
CHIEF DEPUTY DIRECTOR DAMM: Essentially, that is correct.

The Commission, in approving the Long Range Development Plan, there is approximately 550 acres of open space, of that 150 acres was required to be dedicated open space. The remainder of it was simply to be designated in the plan as open space.

CHAIR WAN: Then there is the question raised in the National Park Service letter, about the 72-acre donation property in Las Flores Canyon, on page 3, have you read that?

CHIEF DEPUTY DIRECTOR DAMM: Hold on a minute.

CHAIR WAN: And, that question is that they question about the feasibility of their accepting that acreage, simply because they say that there is a failing canyon side road, and that the property needs to be fully remediated, and all easements associated with the property must be disclosed. Until these two requirements are fulfilled the park land agency cannot consider accepting the property in full fee title.

Do you know if that issue has been resolved to this point?

EXECUTIVE DIRECTOR DOUGLAS: I don't.

CHAIR WAN: So, we don't know whether that 72-acre mitigation parcel is even possibly a mitigation parcel, whether it will be accepted or not?
CHIEF DEPUTY DIRECTOR DAMM: I do not know that.

CHAIR WAN: Okay.

COMMISSIONER FLEMMING: Could we ask their attorney if that has been settled?

CHAIR WAN: Yes, you can always ask a question.

MS. STARRETT: I am Cindy Starrett. The letter you refer to was from December of 1998. It was submitted in the county process. The county required that that issue be resolved, and we are in the process of resolving that issue, such that the property can be accepted.

CHAIR WAN: But it hasn't been resolved to this point?

MS. STARRETT: It is currently being resolved, and it has to be resolved before we could pull any permits.

CHAIR WAN: All right, that answers my question.

With that, I am -- oh, Commissioner Daniels.

COMMISSIONER DANIELS: Thank you, just a couple of quick follow-up questions on the geological issue.

Does staff have an opinion as to the geologic stability of the area, without any grading at all, as compared to the 4.5 million cubic yards of grading, remediation proposed? how does the geologic stability compare, if you have any opinion at all?

CHIEF DEPUTY DIRECTOR DAMM: I am not a geologist.

EXECUTIVE DIRECTOR DOUGLAS: We are getting one.
CHIEF DEPUTY DIRECTOR DAMM: I don't think I can really answer that question.

The only thing I can tell you is it is not moving at this time, the slide. But, comparing the remediation, and the site after the remediation done, versus current conditions, and whether one is better, I don't feel that I can answer that.

COMMISSIONER DANIELS: Okay, and one other question, it may seem unrelated. But, at the time of the approval of the Long Range Development Plan in 1990, was any consideration given to urban runoff, and measures for that?

CHIEF DEPUTY DIRECTOR DAMM: I think you are going to have to hear from the university's representatives, with regards to the question of urban pollutants, and non-point source type pollutants, such as from parking lots, or something like that. We did not review that issue at this time, Commissioner. We focused on the changes that were occurring.

MS. STARRETT: Hi, Cindy Starrett, again.

Yes, in 1989 and 1990, waste water runoff, spray irrigation, were all very major issues considered by the Commission, and in fact those were some of the modifications that were imposed on the project, to restrict those issues.

In the recent county process, once again, we have a number of conditions, NPDES permits, storm water management
plans. We have about 200 mitigation measures from the county that deal with those issues.

COMMISSIONER DANIELS: Thank you.

CHAIR WAN: One more question, and then we will go to closed session.

COMMISSIONER MC CLAIN-HILL: Just absent the filing of the amendment, what would the process -- what process would have been required of Pepperdine, to proceed with development of this project?

CHIEF DEPUTY DIRECTOR DAMM: Under the Coastal Act provisions for Long Range Development Plans, once the plan is approved then the university is required to submit what is referred to as a notice of impending development. They submit that to our office, and the Commission staff, and ultimately the Commission review that. You can only approve as submitted, or approve with conditions that notice of impending development. You cannot deny it, under the provisions in the Coastal Act.

CHAIR WAN: With that, we are going to go into closed session, and I am going to ask the audience to clear the room -- is that how we are going to do it? or do we have a room?

You can stay here. We are going to go.

DEPUTY ATTORNEY GENERAL PATTERSON: We will go into the back room.
[Closed Session]

CHAIR WAN: Everyone here? Okay.
Mr. Faust.

CHIEF COUNSEL FAUST: Yes, Madam Chair.

In closed session, the Commission discussed its

litigation risk with regard to the pending Pepperdine LRDP

amendment, received advice from its counsel, but took no

action.

Madam Chair, that concludes my report on closed

session.

CHAIR WAN: Thank you.

With that, I am going to open the matter for
discussion. Commissioner Orr, and then Commissioner Krueger,
and then Commissioner McClain-Hill.

COMMISSIONER ORR: Thank you, Madam Chair.

For me, really the critical issue is whether or

not there is an environmentally sensitive habitat area at

issue here -- or ESBA, as we use the term -- and to me I am

completely convinced that this not something that was looked

at all, or with any seriousness, or serious information, when

the prior decision was made.

It also seems to me, in light of what our

biologist has said, in light of what one of the leading

experts from Berkeley on rare grasslands in this area has

said, that this is an ESBA, that the 8 acres on the site are
probably the best example of this habitat type that exists, and it strikes me that it really is this Commission's duty to both identify those areas, and rigorously protect them when they are there.

And, for that reason, and you know, opening a lively discussion, it seems to me that we really have an obligation as a Commission to protect the ESHA, and that in looking at this amendment to the LRDP, as a whole, that we really have to weigh it against the standards in the Act for protection of ESHA, and I think there is no doubt in the record that this complete ESHA, what I believe is an ESHA, would go away, would disappear, with this project. And, there is plenty of evidence in the record that it is anything but certain that these ancient well established ecosystems can be easily -- or be reestablished at all offsite. We just don't know.

And, again, we have the Bolsa Chica case saying that even if they could, it is not our business to decide that you try to move it somewhere else, or that you try to recreate it somewhere else.

So, for all of those reasons, I am going to support staff.

CHAIR WAN: Commissioner Kruer.

COMMISSIONER KRUIER: Thank you, Madam Chairman. I think, after reviewing everything that I have
the last week or so on this particular project, I am very concerned by the precedent. I believe that this was a pre-approved Long Range Development Plan, similar to other things that are approved during a long process.

This particular process has taken this applicant almost 10 years, $7.5 million of entitlement and infrastructure costs, et cetera. I find it a very weak argument, in reviewing the grading plans of the previous Long Range Development Plan, and overlaying it over the new Long Range Development Plan. I heartedly feel the facts are there, that there is a change in the land formation, because it is almost always the case, when you are looking at a project like this, that has three -- the walls are very high on three sides, in a flat area where it is now the upper campus, where the lower campus used to be, it appears to me, a canyon, that there is going to be geological stability problems that you have to do.

In fact, I think the university, through its geologist, and long term planning in looking in this, they have done substantial amounts of boring, almost one for every 1.5 acres, which is much greater than normally you do. You normally do 10 to 20 acres.

I think, in fact, that the stability of the landslide area not only is something that should be done, but it is obviously something to protect the lower campus, I
think, also. This is a big landslide area.

I would be very concerned if the amount of grading, this extra 1.5 million yards that everybody makes a big ado about, was off site, and had to be -- but it is 750,000 yards of cut, and 750,000 yards of fill, totally filled, totally balanced on the site, totally to take care of what I think the Coastal Act says, to make this project, to make this area stable, and surrounding areas around it.

And, I think that the fact of using this grading issue, which does not -- if it went outside of the grading envelope, by the previous Long Range Development Plan, and it was a latitude movement, I don't know -- then, I would have a problem, and I don't know what I would have done with this project in 1988.

But, I know today that I think that there is an issue of reliance, there is an issue of fair play, there is an issue, whether it is a specific plan, a tentative map with conditions, a Long Range Development Plan, you have to stick by previous decisions.

And, I don't know why this needed an amendment, but because it needs an amendment, I think it should have been very narrow. It should have been very narrow, because this is the same development that was approved in 1988, the same development that this Coastal Commission went to court and fought to defend. It is the same square footage. It is
the same grading area. It is the same elevations. They have made minor changes, for fire and safety, they have put in a second loop road.

I think it is very, very important, and I don't agree with, in this particular case, as some of the people have said, that it isn't important to the university. I think to any great institution of this magnitude, the closeness of having other faculty and student housing, to have it in the coastal zone, to have it part of their campus, helps them attract, recruit, and make them a greater university.

But, I have grave problems with using the grading, as a way to open up, "Oops, we didn't like what we approved 10 years ago. We don't like the fact you spent $7.5 million. We don't like the fact you went through the County of Los Angeles."

And, I don't like the fact that this particular project is now down to 52 acres, hundreds of acres have been mitigated and put aside for ESHA, for open space, for other things. I don't hear much about that.

I have a real problem of supporting the staff on this particular project. I think it sends the wrong message. It is the wrong thing for our educational institutions. This is the type of visitor-serving thing we want. We want to make the university a better place.
This grading issue, I have a real problem, because nowhere in the Coastal Act does it indicate to me that if I did the geology, and it was 20 feet deep, and now it is 90-feet deep, and it is all balanced on site, that that is a reason, that is a reason to deprive 10 years of planning, and deprive this campus from happening. I have a real problem with that, and I really think the scope should be a very narrow amendment.

And, keep our word, as the Coastal Commission, that we did 1988, and we defended that. So, I cannot support the staff, and I would support the approval.

CHAIR WAN: Commissioner McClain-Hill, and then Commissioner Allgood.

COMMISSIONER MC CLAIN-HILL: Commissioner Wan, I would like to make a motion, and then have the opportunity, assuming it gets a "second", to speak to that motion.

[MOTION]

I move that the Commission certify the Pepperdine University Long Range Development Plan Amendment 1-99 as submitted, and I recommend a "Yes" vote.

COMMISSIONER FLEMMING: Second.

COMMISSIONER KRUER: Second.

CHAIR WAN: Moved by Commissioner McClain-Hill, seconded by Commissioner Kruer.

Commissioner McClain-Hill.
COMMISSIONER MC CLAIN-HILL: This particular application, or amendment, presents a very, very, very difficult issue to the Commission, in my view.

I am, however, persuaded that -- and would like to say very firmly -- that it is our job to enforce the law. And, it seems to me that in the context of the Coastal Act, that we are -- the most appropriate action for this Commission to take, would be to approve this particular amendment.

The fact of the matter is the Act provides for a planning process specific to universities. That planning process is different from the general application and permitting process. It is also different from our Local Coastal Plans.

With respect to that planning process, Pepperdine came in, had their project reviewed, had their project significantly conditioned, and then certified by this Commission. There is nothing before us today, which in any way undermines the integrity of the plan that was certified by this Commission.

It seems to me that our integrity as a body, and our role in government, I mean, we have the Coastal Act, and the Coastal Act exists to protect the environment, but the Coastal Act is to be administered like every other law in the land. There must be consistency. There must be an ability
to rely on the law.

Maybe in 1989, the Commission should have done something different. Maybe in 1990, it should have done something different. It didn't. It doesn't seem to me to be appropriate, in fact, it is not consistent with due process for us to, at this juncture, say, "We get another shot," not because the university is coming in to modify what it committed to.

And, with respect to the grading issues, staff has indicated that this grading plan that the university is now submitting an amendment for, in its view, will create a project that assures safety. So, the grading plan, the change, is merely a pretext, in my view, to the extent that at the very time that we certified this plan, we knew that there may be additional changes, with respect to grading. We were absolutely aware of that. It was fully discussed, and in fact, conceptually, it makes sense that there would be, as we got more specific with respect to preparation for development, some changes on grading.

So, to use that as a pretext now, to go back and to say that the plan that we certified is no longer consistent with the Coastal Act, and we are going to, in effect, take back the approval to go forward, to me, is not consistent with our role as a body in the overall chain of development of this kind. And, again, this is different.
On the issue of reliance, applicants know when they come in for permit extensions, things can change. Applicants know that just because they have a certified LCP, that that doesn't insure any specific site, with respect to development.

With respect to this Long Range planning document, though, the very purpose of the document is to identify sites, to agree as to what can be legally developed. It is different. And, in my view, with respect to specific changes that go to the integrity of the plan siting, this body cannot in good faith, and with any degree of integrity enforce the law in a way that withdraws the approval.

CHAIR WAN: Commissioner Allgood.

COMMISSIONER ALLGOOD: Thank you. I have got a couple of questions of staff, and then a comment.

If the project were denied, and the land remained intact, is there any assurance that that landslide above the developed campus, would be stable?

EXECUTIVE DIRECTOR DOUGLAS: I am glad you asked that question, because I wanted to make sure that for the record, before you take any action, that be made clear.

There is nothing in the record that indicates the upper campus area, that is designated for that, in any way threatens the lower campus. That has not been raised as an issue, so we have no information to suggest that the safety
of the lower campus depends on the installation of this project, the grading involved with this project.

COMMISSIONER ALLGOOD: Is there any indication that it is safe? I mean, was the question asked? One of the things that strikes me about the record from '89 is that a lot of questions weren't asked, so I am hoping to ask some of the questions that are relevant today.

Is there any assurance, any record, that that slide is stable?

EXECUTIVE DIRECTOR DOUGLAS: Well, maybe the applicant's representative can respond to that.

But, when the Commission approved the lower campus, I mean, there must have been some discussion there about whether or not it was safe to do that without the necessity of grading the upper. But, I don't know the answer specifically.

MS. STARRETT: If I could address that.

Cindy Starrett, for the applicant.

I just talked with our geologist. There is evidence in the record -- it is in the documents that we have submitted -- that that landslide is unstable. We will have to protect it for the lower campus, as well.

COMMISSIONER ALLGOOD: My next question, in regard to the slide, is if that area does slide, what will that do to the needlegrass grasslands there? how do they respond to
disturbed soils?

CHIEF DEPUTY DIRECTOR DAMM: Commissioner, staff doesn't have the answer to that. It would depend on the way the slide occurred, whether there was some sort of mass waste or destruction as a result of the slide, or possibly it just moves, and the needlegrass moves with it.

COMMISSIONER ALLGOOD: Okay.

CHIEF DEPUTY DIRECTOR DAMM: We don't know the answer to that.

COMMISSIONER ALLGOOD: In the discussion in looking at the transcript from the '88 - '89 hearings, there was a lot of acknowledgement that there was needlegrass and other flora on the site, but it didn't seem to occur to anybody, and maybe it was not, in 1988 or '89, considered to be an indicator of an ESHA. Do you have any recollection, any feel, were we declaring needlegrass habitats ESHA in 1988 and '89 when this was approved?

CHIEF DEPUTY DIRECTOR DAMM: In this particular instance, Commissioner, I was at the hearing. I have read the transcript. The question of the needlegrass, it was a non-issue at that time. It was identified, as I said, in this very brief report at that time, as existing, but it was given no significance from an environmental standpoint.

COMMISSIONER ALLGOOD: Is needlegrass only -- has needlegrass only been recently recognized to be in limited
supply and endangered?

EXECUTIVE DIRECTOR DOUGLAS: We'll ask Dr. Dixon to respond to this.

STAFF GEOLOGIST DIXON: Needlegrass has been identified as very threatened by the California Department of Fish and Game, as part of the natural diversity data base.

What I am searching for here is a document that might have that date. [Pause in Proceedings]

Well, unfortunately, these are documents that are frequently updated, and this one is 1997. I don't know how it was listed 10 years prior to that.

COMMISSIONER ALLGOOD: Yes.

STAFF GEOLOGIST DIXON: It was, in fact, probably already somewhat rare, but whether or not it was sufficient that it came sort of into the official spotlight, I don't know.

COMMISSIONER ALLGOOD: Okay, thank you.

I am troubled by a couple of things. If, in fact, there is ESBA here, that is a concern. But, I tend to believe that Pepperdine wouldn't be here today, had they not discovered the need to grade more deeply, and that they would have gone ahead anyway without the need for a hearing of this sort without that discovery.

And, it strikes me that they are about to
potentially be punished for both following the law, and being open and honest. This is a very difficult decision for me to have to vote on. I don't want to see any environmentally sensitive habitat areas destroyed.

On the other hand, it seems to me that Pepperdine has relied on a decision made 10 years ago, by our predecessors on this Commission. It is a major expense and investment on their part. They are not altering the plan, except in very minor ways, that was approved 10 years ago.

I think, if there is a deficiency here, it was on the part of the Commission and its staff for not recognizing what they had to protect 10 years ago. And, that is kind of troubling. It troubles me that we are -- this is probably not going to be the last situation like this that we are going to face, but we had approved this plan 10 years ago, a host of people are relying on it in good faith, and acting in good faith on their part, and it seems to me that we are using the deeper grading -- not an expansion of the footprint, but a deeper grading to accomplish what we should have -- to do the duty we should have done 10 years ago, I guess, is what is troubling to me.

I want to listen to my fellow Commissioners now.

CHAIR WAN: Commissioner Dettloff.

COMMISSIONER DETTLLOFF: This, I am sure, has been a very difficult decision for all of the Commissioners. We
have two competing values. We have the educational goals by
the university, and the competing value of habitat protection
from those who are opposing this project, both are very good
goals, so this is very difficult for the Commission.

However, I think I am looking at it from a
different perspective. I am an elected official, and so I am
viewing it from that position. I think that, when the
decision was made in 1990, that decision was based on the
facts that the Commissioners then had at hand. I don't know
how I would have voted then, quite possibly, with the
information we have today, I would not have been able to
support this project; however, the Commission, in 1990 made
the decision that they would support the project. Not only
did they support the project, but throughout the following
months, years, they went to court, not only as the applicant,
but a longstanding forward was also the Commission's
representatives, through their legal staff, supporting this
project.

The project really has not changed that much, in
those 10 years. We still see the same footprint. We know
that there are some geological problems on the site. Those
were there in 1990, and the Commission dealt with them then,
knowing that there would be additional work that had to be
done.

So, a decision was made, and I think that is very
important, especially to applicants, cities, and counties, anyone who comes forward to the Commission after a decision is made, those local entities then go forward to make other decisions. Many times those are very costly decisions. Cities and counties have to put forward a great deal of an investment in their planning staff, who will go over those plans, based their decision on the decision that has already been make by this Coastal Commission. So, there is a great dependence upon how good our decisions are, and can they be relied upon.

The applicants are putting a great deal of money into their projects, they are going to the banks for their financing, so many steps take place after a decision is made. We have had good decisions, we have had bad decisions, by this Commission.

But, we are now in a position where we are going to have to address a decision that was made some time ago, and then certain actions took place after that. So, even though we may view this project somewhat differently than we would have in 1990, there is some new information. I still feel that we have to stand by the decision that was made in the '90s, and so with that I am going to be supportive of the university being able to go ahead with their plans, their future plans, for this site.

CHAIR WAN: Let me say that this is, with all of
my fellow Commissioners, I think a difficult decision. It is particularly difficult for me, since I live in the area. I know the university. I consider people like Dr. Benton a friend, and I think that Pepperdine, in fact, is a good neighbor. But, I have to look at a decision based on the law, and not on who the applicant is.

What the law says is, basically, that we treat LRDPs -- and this is the way the Commission has done it in the past -- that we treat LRDPs as we treat LCPs, and that when there is an amendment we review the LRDP as amended. There is an amendment in this case. If they had not come in for an amendment, that would be different.

And, when we review the LRDP, we have to review it for consistency with the Coastal Act. This is the way we have been applying it to other LRDPs, and if we don't do that here, we won't be able to do that -- I know the Commission isn't always consistent, but I like to think that we try to be consistent -- with regards to other LRDPs.

And that brings me to one of the key issues, and that is the issue of the BSHA. Is needlegrass BSHA? I don't think there is any question. The applicant, themselves, made the comment that I didn't even realize: only 760 acres left. I don't know how many there were in 1989, but I am sure there is far fewer now. But, let me assure you, there was no discussion about needlegrass in 1989.
The discussions about ESHAs were not about needlegrass ESHAs. They were about ESHAs that were located in the areas that were to be restricted, either through deed restriction, or in the open space areas.

The only information that anybody had about the needlegrass was, in essence, a listing in the biota report. It was not in an EIR. It was in a biota report that had a list of plants. Did we know that needlegrass, as a plant existed there, along with all of the other plants? yes. Was it indicated that it was a habitat, a needlegrass habitat, a community of plants that constituted an ESHA? no. There was nothing in the record, and there was nothing in the discussion that indicated it.

When I look for consistency in review of the LRDP, with the Coastal Act, then I have to look at the needlegrass, and it is, in fact, an ESHA. It is not one of the ESHAs that is defined by the county. The county, frankly, hasn't updated their ESHAs since I think they did their original LUP in the late 1970s; but it doesn't even matter, the LUP doesn't take precedent here. It is consistency with the Coastal Act, and so the reference to the county's ESHAs doesn't matter.

In my opinion, this is very rare. If there are only 760 acres left, these are -- and I learned something new, that this grass, as old as it is, is extremely
interesting. Grasslands are very fast disappearing. They are one of the most endangered habitats around. It does make a difference, contrary to what is said in the appendix that was handed to us, which indicates, and makes the comment that -- if I can find this, "For most wildlife there is no difference between annual and native grasslands." I beg to differ with that. There is a huge difference between a non-native, and a native grassland. It is like saying to me that there is no difference between a tree, a clump of trees is a clump of trees. It provides food. It provides habitat. It provides, you know, security, yes, but the species that depend on it are very different.

And, when you are losing your native grasslands, you are going to lose the species that depend on those native grasslands. You cannot replace this. You cannot move this, if you choose to move it.

And, I therefore am forced to review this, as I said, for consistency with the Coastal Act. The Coastal Act requires that we protect environmentally sensitive habitat, and I don't see how you can view these native grasslands -- it is a grassland habitat, it is not just a clump of grass, okay, these grasslands habitat -- as anything other than ESHA.

And, for that reason, I will not support the motion.
Commissioner Daniels.

COMMISSIONER DANIELS: I am going to vote in favor of the motion.

My decision is not based on who the applicant is and, in fact, I don't even agree with many of the arguments that the applicant has presented. And, I do have to say that if the decision was before me today, as what I am characterizing for myself is an original decision, in other words, if I was to decide this LRDP for the first time, based on what we know, I am not sure that I would agree with the siting. But, the fact of the matter is that there was an LRDP that was approved, and the specific site was selected and approved by this Commission.

What I see before us is an amendment, that doesn't change that site. It only changes the amount of grading. The footprint is the same, they are just going to go deeper, and they are going deeper for safety reasons. Based on that, I agree with the motion.

I want to say that if there had been any effort to change the site, to site the project somewhat differently, my view would probably be different, and I would urge a different result.

But, based on the fact that it is exactly the same site that was already approved by us, I will support the motion.
CHAIR WAN: Commissioner Flemming.

COMMISSIONER FLEMMING: Okay, thank you. I wasn’t going to weigh in on this, because I agree with so much that has already been said.

And, so to save time, I thought Patrick’s analysis was extremely good, and then Cynthia summed up for me an awful lot, and then Paula, with your wrestling with if it were de novo, which it is not, I think it is incredibly important to honor the decisions made, and to give a sense of certainty to the LRDP.

And, for those who are wrestling with this conflict, the Section 30007.5 on -- the title is Resolution of Conflicts. If you would read through that, it makes your decision, I think, easier, because the Coastal Act is dealing with change all of the time. We have conflicting interests all of the time, and these decisions are difficult, but they do provide a way to deal with this. The Legislature has done that for us.

So, I would urge support of this, and giving certainty to Pepperdine on their Long Range Development Plan.

COMMISSIONER ORR: Call the question.

CHAIR WAN: Shall I call the question?

COMMISSIONER ORR: Yes.

CHAIR WAN: Mr. Faust, did you -- okay.

I am going to call the question.
Will you call the roll, please.

SECRETARY GOEHLER: Commissioner Daniels?

EXECUTIVE DIRECTOR DOUGLAS: Madam Chair?

CHAIR WAN: Yes, go ahead.

EXECUTIVE DIRECTOR DOUGLAS: Before you go for the vote, I just want to make sure that the Commission understands that it requires six votes for approval of an LRDP amendment, a majority of the appointed membership.

COMMISSIONER DANIELS: And, I would just like to clarify the motion?

COMMISSIONER MCCLAIN-HILL: The motion is to certify the amendment, and I am requesting a "Yes" vote.

COMMISSIONER DANIELS: Right.

CHAIR WAN: The maker of the motion is requesting a "Yes" vote, which would approve the amendment.

COMMISSIONER FLEMMING: Right.

CHAIR WAN: Call the roll.

SECRETARY GOEHLER: Commissioner Daniels?

COMMISSIONER DANIELS: Yes.

SECRETARY GOEHLER: Commissioner Dettloff?

COMMISSIONER DETTLOFF: Yes.

SECRETARY GOEHLER: Commissioner Allgood?

COMMISSIONER ALLGOOD: Yes.

SECRETARY GOEHLER: Commissioner Flemming?

COMMISSIONER FLEMMING: Yes.
SECRETARY GOEHLER: Commissioner Krueger?
COMMISSIONER KRUER: Yes.
SECRETARY GOEHLER: Commissioner McClain-Hill?
COMMISSIONER MC CLAIN-HILL: Yes.
SECRETARY GOEHLER: Commissioner Orr?
COMMISSIONER ORR: No.
SECRETARY GOEHLER: Chairman Wan?
CHAIR WAN: No.
SECRETARY GOEHLER: Six, two.
CHAIR WAN: The amendment passes.

[ Whereupon the hearing was concluded. ]