

90
R 378
1981
v.1

PUBLIC HEARING

before

SENATE JUDICIARY COMMITTEE

and

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

on

ACR-3037 and SCR-3023

(Amending the Constitution to clarify
status of lands formerly flowed by mean
high tide.)

Held:
June 5, 1981
Assembly Chamber
State House
Trenton, New Jersey

SENATE COMMITTEE MEMBERS PRESENT:

Senator Steven P. Perskie (Chairman)
Senator John F. Russo

ASSEMBLY COMMITTEE MEMBER PRESENT:

Assemblyman William L. Gormley

ALSO:

John J. Tumulty, Senior Research Associate
Office of Legislative Services
Aide, Senate Judiciary Committee

Bradley S. Brewster, Research Associate
Office of Legislative Services
Aide, Assembly Judiciary, Law, Public Safety and Defense Committee

* * *



I N D E X

	<u>Page</u>
Richard McManus Associate Counsel to Governor Brendan Byrne	2
Judith Yaskin First Assistant Attorney General	3
David Kinsey Director Division of Coastal Resources Department of Environmental Protection	23
Assemblywoman Hazel Gluck District #9	23
Assemblyman James R. Hurley District #1	26
Robert Ferguson Executive Vice President New Jersey Association of Realtors	27 & 3X
D. W. Bennett American Littoral Society	28
Edward Klein Mayor Brigantine, New Jersey	29
Kenneth Smith Director New Jersey Shore and Beach Association	30
Edward LaRue Linwood, New Jersey	30
David Moore Director New Jersey Conservation Foundation	32 & 1X

1 +11:III
12-22:I
23-29:IV
30:36:II

I N D E X

	<u>Page</u>
Richard McManus Associate Counsel to Governor Brendan Byrne	2
Judith Yaskin First Assistant Attorney General	3
Assemblyman J	

[OFFICIAL COPY REPRINT]

SENATE CONCURRENT RESOLUTION No. 3023

STATE OF NEW JERSEY

INTRODUCED MAY 4, 1981

By Senator FELDMAN

Referred to Committee on Judiciary

A CONCURRENT RESOLUTION proposing to amend Article VIII of the Constitution of the State of New Jersey by adding a new Section V and paragraph 1 thereto.

1 BE IT RESOLVED *by the Senate of the State of New Jersey (the*
2 *General Assembly concurring):*

1 1. The following proposed amendment to the Constitution of the
2 State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

3 Amend Article VIII by adding a new Section V, paragraph 1
4 as follows:

SECTION V

5 1. No lands that were formerly tidal flowed, but which have not
6 been tidal flowed at any time for a period of 40 years, shall be
7 deemed riparian lands, or lands subject to a riparian claim, and
8 the passage of that period shall be a good and sufficient bar to any
9 such claim, unless during that period the State has specifically
10 defined and asserted such a claim pursuant to law. This section
11 shall apply to lands which have not been tidal flowed at any time
12 during the 40 years immediately preceding adoption of this amend-
13 ment **with respect to any claim not specifically defined and asserted*
14 *by the State within 1 year of the adoption of this amendment*.*

SCHEDULE

1 2. When this proposed amendment to the Constitution is finally
2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
3 it shall be submitted to the people at the next general election
4 occurring more than 3 months after such final agreement and shall
5 be published at least once in at least one newspaper of each county
6 designated by the President of the Senate and the Speaker of the
7 General Assembly and the Secretary of State, not less than 3
8 months prior to said general election.

1 3. This proposed amendment to the Constitution shall be sub-
 2 mitted to the people at said election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at such
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 a legend which shall immediately precede the question, as follows:

8 If you favor the proposition printed below make a cross (X),
 9 plus (+) or check (✓) in the square opposite the word "Yes."
 10 If you are opposed thereto make a cross (X), plus (+) or check
 11 (✓) in the square opposite the word "No."

12 b. In every municipality, the following question:

	Yes.	RIPARIAN LANDS Do you approve the amendment to Article VIII of the Constitution adding a new Section V and paragraph 1 thereto, requiring that lands shall have been tidal flowed within the last 40 years to be deemed riparian lands subject to State claims, and barring State claims not de- fined and asserted by law within that period?
	No.	

ASSEMBLY CONCURRENT RESOLUTION No. 3037

STATE OF NEW JERSEY

INTRODUCED MAY 4, 1981

By Assemblymen GORMLEY, MATTHEWS, EDWARDS, HERMAN, HURLEY, Assemblywoman GLUCK, Assemblymen KARCHER, DOWD, STEWART, D. GALLO, CHINNICI, JANISZEWSKI, ADUBATO, T. GALLO, VISOTCKY, BATE, MAGUIRE, CARDINALE, PAOLELLA, KOSCO, FRANKS, BASSANO, HARDWICK, ROCCO, ZANGARI, THOMPSON, SMITH, LITTELL, Assemblywoman MUHLER, Assemblymen REMINGTON, SAXTON, VILLANE, Assemblywoman GARVIN, Assemblyman FORTUNATO and Assemblywoman BURGIO

Referred to Committee on Judiciary, Law, Public Safety and Defense

A CONCURRENT RESOLUTION proposing to amend Article VIII of the Constitution of the State of New Jersey by adding a new Section V and paragraph 1 thereto.

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey (the Senate concurring):*

1 1. The following proposed amendment to the Constitution of the
2 State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

3 Amend Article VIII by adding a new Section V, paragraph 1
4 as follows:

SECTION V

5 1. No lands that were formerly tidal flowed, but which have not
6 been tidal flowed at any time for a period of 40 years, shall be
7 deemed riparian lands, or lands subject to a riparian claim, and
8 the passage of that period shall be a good and sufficient bar to
9 any such claim, unless during that period the State has specifically
10 defined and asserted such a claim pursuant to law. This section
11 shall apply to lands which have not been tidal flowed at any time
12 during the 40 years immediately preceding adoption of this amend-
13 ment.

SCHEDULE

1 2. When this proposed amendment to the Constitution is finally
2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,

3 it shall be submitted to the people at the next general election
 4 occurring more than 3 months after such final agreement and shall
 5 be published at least once in at least one newspaper of each county
 6 designated by the President of the Senate and the Speaker of the
 7 General Assembly and the Secretary of State, not less than 3
 8 months prior to said general election.

1 3. This proposed amendment to the Constitution shall be sub-
 2 mitted to the people at said election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at such
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 a legend which shall immediately precede the question, as follows:

8 If you favor the proposition printed below make a cross (×),
 9 plus (+) or check (√) in the square opposite the word "Yes."
 10 If you are opposed thereto make a cross (×), plus (+) or check
 11 (√) in the square opposite the word "No."

12 b. In every municipality, the following question:

RIPARIAN LANDS	
Yes.	Do you approve the amendment to Article VIII of the Constitution adding a new Section V and paragraph 1 thereto, requiring that lands shall have been tidal flowed within the last 40 years to be deemed riparian lands subject to State claims, and barring State claims not defined and asserted by law within that period?
No.	

STATEMENT

This Concurrent Resolution would amend Article VIII of the State Constitution by adding a new Section V and paragraph 1 thereto. The amendment would state that lands formerly tidal flowed, which have not been tidal flowed for a period of 40 years, shall not be deemed riparian lands, or lands subject to a riparian claim. Under the amendment, the passage of that period of time shall be a good and sufficient bar to any State claim, unless during that time the State has specifically defined and asserted a claim pursuant to law.

STEVEN P. PERSKIE (Chairman): Good morning. This is the joint public hearing of the Judiciary Committee of the Senate, and of the Judiciary, Law, Public Safety, and Defense Committee of the General Assembly. We are here this morning to conduct a hearing on Senate Concurrent Resolution 3023 and Assembly Concurrent Resolution 3037, both as amended by the respective committees and approved on second reading sometime last month.

We therefore will be dealing this morning with the official copy reprints of both bills, which are identical.

I am Steven Perskie, Chairman of the Senator Judiciary Committee. Seated to my immediate left is Assemblyman Bill Gormley, representing this morning the Assembly Committee. There will be other members of either or both committees joining us as the hearing progresses. I notice we have some members of the legislature present with us this morning, who I assume will be prepared to testify.

To my right is John Tumulty the staff aide for the Senate Committee, and to Assemblyman Gormley's left is Brad Brewster staff aide to the Assembly Committee.

We would appreciate anyone who desires to be heard this morning and who has not previously advised us of that, to come in and check in with John who will keep the names right here. We will try, generally speaking, to call the witnesses in the order in which they advise us of their interest. We do, however, have several representatives here this morning from the Administration, and I will afford them, after some opening comments by Bill Gormley and myself, the opportunity to be heard. We will then take the witnesses that have appeared.

The resolutions propose the same language to amend the Constitution by adding a new section five, paragraph one to article eight. This paragraph would provide, in effect, a statute of limitations, a period within which the State would have a right to define and to assert the riparian rights that are established as rights of the people of the State in the Constitution. It should be emphasized by-- I just looked down and I was going to say it should be emphasized by the sponsors. I notice that the printed copy of the Senate Resolution designates Senator Feldman as the sponsor of the Resolution. That is-- In fact, as Yogi Berra would once have said: "That is a typographical error." The sponsor of the Resolution in the Senate is Senator Perskie, and I would appreciate it, Mr. Tumulty, if you would see to the correction on the official record. But, the sponsors of both versions have indicated - and I indicate this morning - that this proposed amendment is not designed and would not have the effect of depriving the State of any riparian claim to that which the Constitution entitles the State. It simply provides a time frame within which any such claim may be defined and asserted after a given piece of ground would cease to be tidal flowed. That is an important distinction and one that I hope will be reflected in the testimony of all of those who do speak on the question. Assemblyman?

ASSEMBLYMAN GORMLEY: Thank you, Senator Feldman. (laughter) The one point that I think has to be stressed more than anything else is that there might tend to be confusion as to the impact of the resolutions. The resolutions in no way affect any of the prerogatives of the State regulatory agencies with regards to environmental protection. As far as Wetlands,

CAFRA, Pinelands, or any other State regulatory system that we have designed to protect our environment, this bill does not affect that in any way, shape, or form. The fact that a person might have a right to the land and that person then could say that the State's right is extinguished -- this does not in any way give that person carte blanche with regards to environmental controls, and that must be stressed.

Usually when we are talking about a situation like this, we are talking about ground that is developable. That's the real question that comes in -- or it is ground that has been developed and has one's building, home, or property upon it.

With that, Senator Perskie, I will turn it back to you.

SENATOR PERSKIE: We have a delegation here from the Administration. We have Richard McManus, representing the Office of Counsel to the Governor; Judy Yaskin, representing the Attorney General's office; Elias Abelson, representing the Attorney General's office; and David Kinsey, representing the Department of Environmental Protection. Lady and gentlemen, proceed as you see fit.

R I C H A R D M c M A N U S: Good morning.

SENATOR PERSKIE: Good morning.

MR. McMANUS: I am Richard McManus, Associate Counsel to Governor Byrne. I would like to express the opposition of the Administration to the passage of Senate Concurrent Resolution 3023, and Assembly Concurrent Resolution 3028.

The members of the legislature are aware of the relationship between the value of the State's interest in riparian lands and the public school system. Money from the sale or lease of riparian lands goes to the fund for the support of free public schools. That fund now stands in the neighborhood of \$35 million, and a major portion of it is used as a reserve to support local school bond issues.

Because of this use of the fund, our school districts enjoy higher bond ratings and consequently lower interest rates than they would otherwise. As a rough estimate the fund can as much as triple when the State's mapping program is completed and claims are made. In other words, we are talking about a very large sum of money with significant effect on the financing of the public school system.

Governor Hughes, in 1965, vetoed legislation with a similar purpose concerning the Meadowlands. He called it a one hundred million dollar give away.

The Administration recognizes the disruption that this causes to tidal lands in south Jersey particularly. The mapping process that the State is engaged in now is by nature a somewhat time consuming and tedious one. But, given the fiscal realities of government in the 1980's, we are moving as best we can toward a resolution.

The period provided in the amendments is much too brief a period for the State to complete its work. Most of the tidelands in the Delaware River and Bay and on the south Jersey coast will remain unmapped within that period, and the public schools of this State will lose a valuable asset.

I have with me today First Assistant Attorney General Judith Yaskin, Assistant Attorney General Elias Abelson, and Director of the Division of Coastal Resources, David Kinsey. We are prepared to answer your questions

about the mapping program.

SENATOR PERSKIE: I just have one question, Dick. If in fact the mapping process were complete within the period of time provided in the amendment, then the school fund wouldn't lose a dime, isn't that right?

MR. McMANUS: If it were complete.

SENATOR PERSKIE: That's all I have. Thank you.

J U D I T H Y A S K I N: Good morning, Senator Perskie, Assemblyman Gormley.

SENATOR PERSKIE: Good morning.

MS. YASKIN: Gentlemen, how are you? Thank you for this opportunity. My name is Judith Yaskin, First Assistant Attorney General, and with me is Assistant Attorney General Elias Abelson. We are here to speak in opposition to the resolutions. Thank you.

I probably won't be as succinct as Mr. McManus. Our office has been involved in this riparian land problem for the last -- well, probably 100 years. Certainly, Mr. Elias Abelson, in the last five years, has been intensely involved in the development of the mapping process and the legal rights of the State of New Jersey. As Mr. McManus pointed out, nothing is new under the sun. In 1968 when the Meadowlands became a target of rapid development, many of the developers complained that the riparian land claims of the State would impede development and would provide a block and barrier to the development of the Meadowlands. At that time, legislation was proposed which would give away State land.

Governor Meyner was appointed to a panel to review that proposal. Governor Hughes reviewed the legislation and vetoed it. The conclusion of that panel and the conclusion of Governor Hughes is much the conclusion that I would ask you to consider today. You are, in essence, giving away untold millions of state property without the opportunity for the State to property delineate and make claims for the property which has always been theirs. No other state in the Union has ever given away their riparian lands.

The concept of riparian lands evolves from the English law. It has been part of our common law for 200 years. The issue then is, why should New Jersey be the first State to undertake such a giveaway?

SENATOR PERSKIE: Tell me, if you will, why you consider that if the people, as opposed to the legislature, adopted this resolution that it would constitute a giveaway of anything?

MS. YASKIN: As I testified to before, Senator, in your committee, the problem is that the people are being asked to vote on an issue where they do not know the extent of lands involved or the millions of dollars that are being given away. What I think the electorate needs to be is informed, and in order to be informed, Senator, what the State needs is an opportunity to delineate its claims. The potential of damage ought to be able to be assessed by the voter.

If I can continue my testimony, I want to try and put this in perspective. Outside of the Meadowlands, which by the way has been mapped and delineated in accordance with the legislature's command in the '60's, and in accordance with the representation and the suggestion of Governor Hughes and Governor

Meyner's panel, this Meadowlands was mapped. It is now delineated. There is litigation pending about it. But, the development is there, the profit for the developer is there, and the Meadowland development is a fait accompli.

Outside of the Meadowlands and outside of Atlantic City, there are approximately six cases pending in the entire State concerning the riparian claims of the State. There has been a spector raised in the press that thousands of New Jersey citizens risk losing their homelands and their properties and the property where they have built their homes. It just isn't so.

SENATOR PERSKIE: Why not?

MS. YASKIN: The record is clear. What we have done -- and the six cases that are impending primarily involve developers who engaged in lawlessness, who opened bays, who built lagoons and knew that they were violating the State laws and violating the State's claim to riparian lands. We have never, in the history of New Jersey's dealing and claiming its riparian land, deprived someone of their home property. The claims that have evolved are primarily as a result of developer activities. Those developers have been sued, together with the individuals on the property, and resolutions of those claims have always been met.

SENATOR PERSKIE: That's not what the law says, General. Are you telling me that if a piece of property is owned by someone as an individual resident and you can establish on one of your maps that there is a riparian interest in it that you are not going to claim it?

MS. YASKIN: We are going to claim that property.

SENATOR PERSKIE: Of course you are going to claim it.

MS. YASKIN: And they are going to have an opportunity to purchase it.

SENATOR PERSKIE: Of course they are going to have an opportunity to purchase it.

MS. YASKIN: And they are going to have an opportunity to bring claims against their predecessor in title.

SENATOR PERSKIE: If they can find him.

MS. YASKIN: If they can find him, and ordinarily there is no problem in finding them, as litigation throughout the State would indicate.

SENATOR PERSKIE: But, the fact of the matter is such a possibility, the possibility of a State claim on a riparian basis against an individual home owner - the possibility of such a claim - is extent in every one of the counties in the State, is it not?

MS. YASKIN: Extremely remote, but, yes, the possibility is there.

SENATOR PERSKIE: Why is it extremely remote?

MS. YASKIN: Because riparian land that we have dealt with has been given -- there have been grants for the last 100 years of riparian grants. The problem of the gore - and I would like to get to the gore area of Atlantic City - is, I think, a focus of the situation we have here.

SENATOR PERSKIE: Leave Atlantic City out for a minute. Let's talk about the rest of the State. The problem is how remote?

MS. YASKIN: I think very remote. I think in the cases we have had over the 30 and 50 year history that we have researched, this situation is very remote.

SENATOR PERSKIE: How remote?

MS. YASKIN: I cannot quantitate it because I do not have the claims delineated. That's what I am asking you to consider and what this resolution doesn't permit. I think the State has to be given an opportunity to delineate those claims.

SENATOR PERSKIE: This resolution would give the State a year and one-half from now to do it, wouldn't it?

MS. YASKIN: It cannot do it in a year and one-half, Senator, and you know that.

ASSEMBLYMAN GORMLEY: How many years have you been mapping?

MS. YASKIN: The legislature authorized the mapping of the Meadowlands only ten years ago. The State, despite that narrow legislative mandate, has been mapping the entire State for the past ten years. That mapping technique has been in litigation for the last ten years. It was not until 1980 that the Supreme Court validated that scientific approach. So, the State has been very anxious and very active in its mapping. They have spent millions of dollars. We have maps that have been accepted. The Meadowlands are completed. Many other maps are developed. Many maps have been presented to the Tidelands Resource Council. We are and have been for the last ten years spending millions of dollars and proceeding with the mapping for the entire State, not because the legislature required it - they only required the mapping of the Meadowlands - but because--

SENATOR PERSKIE: You didn't require any mappings incident to the Wetlands Act?

MS. YASKIN: Not to my--

SENATOR PERSKIE: That you haven't done either?

MS. YASKIN: The Wetlands legislation, as I understand it, did not-- Specific mapping requirements were only for the Hackensack Meadowlands.

ASSEMBLYMAN GORMLEY: If I may, let's assume--

MS. YASKIN: Which, again, I want to repeat is completed.

ASSEMBLYMAN GORMLEY: Yes. You mentioned that there were three instances, or six instances, where there are currently claims and you mention people who have done illegal filling, or digging out lagoons, or whatever. Was that done over 40 years ago, the digging out of those lagoons?

MS. YASKIN: It is pending litigation. I did not bring the files because I--

ASSEMBLYMAN GORMLEY: In other words, the digging of these lagoons might have been done in the last five years?

MS. YASKIN: Or the last fifty years. I don't have the--

ASSEMBLYMAN GORMLEY: But, we don't know the date? We don't know if this would even affect those situations, do we?

MS. YASKIN: We have situations where we are fairly certain the fill was completed over fifty years ago. The Hackensack Meadowlands taught us that.

SENATOR PERSKIE: Then you have a year and one-half from now within which to assert such a claim, don't you?

MS. YASKIN: I assure you, Senator, if it could be done in a year and one-half it would be done; it can't be. If I can explain the mapping technique, the mapping technique has been very viable for marshlands and for river beds and for other areas of the State. What we have learned with

regard to ocean mapping is that we require additional information. What is shaping up is a battle of experts on how the tide affected the build-up of shore property.

SENATOR PERSKIE: Before you get to the shore then, am I to understand you to say that except for the ocean front and the shore problem, the mapping technique is equal to the task in the interior lands?

MS. YASKIN: It is a primary source of evidential information as to the State's claim. Judge Trautwein of the Supreme Court has said that it is evidentiary of the State's claim, but not dispositive, and he indicated that the plaintiff, or the defendant, whoever claims against the State property, has the right to bring in more scientific information and different tests.

SENATOR PERSKIE: Always. But, let me try my question again, because I think your answer was very interesting but it wasn't the one to the question I asked.

MS. YASKIN: I'll try again.

SENATOR PERSKIE: Let's forget for the moment the problem of mapping on the shore, all right?

MS. YASKIN: Yes.

SENATOR PERSKIE: And let's talk about-- As I understand you, I think you just made a distinction between the problems and the techniques of mapping on the shore and mapping in the interior, is that correct?

MS. YASKIN: That is correct.

SENATOR PERSKIE: And, the techniques that you have already developed are apparently equal to the problem of the mapping of lands in the interior, is that right?

MS. YASKIN: They have been accepted by the court, yes.

SENATOR PERSKIE: So, do I understand you to say that, for example, in a year and one-half you could have completed the mapping process except for the shore?

MS. YASKIN: No, sir.

SENATOR PERSKIE: Why not?

MS. YASKIN: And, I think Mr. Kinsey would best speak to the mapping technique. It is my understand that it would take approximately seven years to finish the mapping for the entire State. I think Mr. Kinsey can best speak to that. That is the estimate our experts give us as to complete this mapping process and delineate claims for the State.

SENATOR PERSKIE: That's the same estimate you gave in 1968, isn't it? Not you personally.

MS. YASKIN: The 1968 estimate dealt with the Meadowlands only. I reiterate to you, it wasn't until 1980 that the courts finally recognized our method.

SENATOR PERSKIE: When was the Meadowlands completed?

MS. YASKIN: In the early '70's. Thank you, Mr. Agelson. So, the legislative mandate to map the Meadowlands was completed in the time frame. The courts didn't accept it until 1980. Or, the courts didn't recognize it until 1980.

SENATOR PERSKIE: But, if this had been in effect it wouldn't have made any difference, isn't that right? Because when you completed your mapping and asserted your claim in the Meadowlands, the fact that it was

later the subject of court proceedings for 'x' number of years wouldn't have vitiated your position that the State had, in fact, defined and asserted its claim, isn't that right?

MS. YASKIN: I don't understand your question, Senator.

SENATOR PERSKIE: This resolution limits the period within which you have to define and assert a claim. It doesn't limit the nature of that claim at all. So, if in fact you started in '68 and you finished in the early '70's and since the early '70's you have been involved in litigation, the fact is that as of when you defined and asserted the claims in the early '70's, that would have, if this language had been in effect, totaled that period, isn't that right?

MS. YASKIN: Oh, that's correct. But, the year and one-half that is proposed in this resolution is totally unrealistic and it is passed with the knowledge that the State's claims won't be delineated. And, the knowledge after a year and one-half is, "we are over; we cannot make claims. It has run." And, what I am saying is, with the knowledge of our experts, and we all have to rely on our experts, they say seven years. It is clear that a year and one-half, whether there is dispute over the expert opinion of seven years or not, won't give the State the opportunity to assert its claims.

ASSEMBLYMAN GORMLEY: Excuse me. On the 40 years, let's assume that the State does the mapping and let's assume that it comes up that 100 years ago you can prove there was a tide line that ran over one's property. Don't you think that eventually the concept of adverse possession should run against the State, and don't you think eventually a person who owns a home - let's say John Doe or Mary Doe, to be bi-partisan about it-- Let's assume that person has paid taxes on that ground for 100 years, and let's assume that your mapping process and your experts show that at one time there was vegetation, or they see vegetation, and the tides ran over that person's ground. You are saying that the State should assert that claim against that person?

MS. YASKIN: I am saying, yes, the State ought to be given an opportunity to assert that claim. If the legislature thinks thereafter constitutionally there ought to be adverse possession that runs against the State, or a statute of limitations, at the time the claiming is completed - for example, that would take care of mistakes in mapping; let's talk about mistakes in mapping - if thereafter you wanted to have the State subject to the same kind of rights as a private individual - for example, undeveloped land of 60 years from the time the individual took possession; not from the time of the claims, not from the time when it tidally flowed, but from the time the individual asserting adverse possession took the claim - 60 years thereafter, when he took possession, then I think that is a consideration that might be brought, and properly brought, to the voters. It would be the first time any state agreed to an adverse possession claim against riparian land. But, why should the State have a lesser right than a private individual would? If you were a private individual, Assemblyman, and you owned property, before someone could claim against your title, they would have to, on an undeveloped piece of property, sit there, open and hostile, for 60 years in possession, not your predecessor in title.

ASSEMBLYMAN GORMLEY: While we are talking about that, I think

that is a good point.

MS. YASKIN: And--

ASSEMBLYMAN GORMLEY: Wait a second. For that 40 year period, if we didn't have a private individual, the only other option we would have would be a municipality or a county and I wouldn't mind a municipality or a county having that ground. They could sell it and make some money for the municipality or the county if it was developable ground. You know, you are saying open-adverse. Yes, it would be by a private individual. The only case where it wouldn't be open and adverse would be if it had been municipal ground or county property.

MS. YASKIN: Well, suppose there was a piece of property, a park - and we have had this in the Meadowlands with Teaneck and several other counties - or if various governmental bodies did pay monies to the Tidelands Resource Council, to the school fund, the Constitution which devised a school fund said that all schools, all municipalities, will benefit from the ownership of riparian land, not one municipality.

ASSEMBLYMAN GORMLEY: That was more by interpretation, that's not--

MS. YASKIN: That's court law.

ASSEMBLYMAN GORMLEY: Yes. We know we have to do a constitutional amendment, but riparian really doesn't jump out of the Constitution right now; it is more by interpretation.

MS. YASKIN: That's right. But, what the law does now provide is that every municipality that might own such a piece of property, to the extent that riparian claims lie in that property, that riparian land is for the benefit of every municipality in this State. It is for the benefit of all of its citizens and for the benefit of the school fund. That is the former legislative and constitutional--

SENATOR PERSKIE: That's not the point of this proposal.

MS. YASKIN: But, it vitiates that past policy.

SENATOR PERSKIE: It does not. What it vitiates is the policy of the State government, which is supposed to act to protect the interest of the people of the entire State. What this amendment does is, it vitiates the policy of the State government to getting around to deciding what claim it has when it feels like getting to deciding it. That's what this vitiates.

MS. YASKIN: And vitiates it in such a way that I think unfairly discriminates against all the other municipalities in this State where riparian claims lie because--

SENATOR PERSKIE: And, that's the issue.

MS. YASKIN: (continuing) --the State does not have an opportunity to delineate its claims under the proposal.

SENATOR PERSKIE: That's the issue. The State has the opportunity to delineate its claims under this proposal to the extent that it wants to move in a year and one-half. That's the issue.

MS. YASKIN: It can't. It is not a question of wanting to move. If it were a question of wanting, it would have been done. It is a question of the ability of the experts to complete the process. Millions of dollars have been spent doing it, Senator. If there is implication here that for some reason the State has been unwilling to move, let me tell you the State moved without legislative mandate. The State went forward and delineated

its claim.

SENATOR PERSKIE: There isn't implication; there is assertion that the State has been incredibly dilatory in its dealings in this matter. That's not an implication; that's an allegation.

MS. YASKIN: And, that assertion, I contend, is erroneous, Senator. We are one of the few states in the United States who have attempted to delineate all of their claims, and no other state has attempted to give away their riparian lands, despite the fact they have not tried to delineate their claims. The State has not been dilatory.

ASSEMBLYMAN GORMLEY: Excuse me. You talk about giving away. If we can say to an individual who is a private property owner that we acknowledge adverse possession against an individual who pays taxes, don't you think eventually that same right can be acknowledged against the State when a person has paid taxes on it? We are not saying you are extinguishing all riparian claims. You have a year and one-half to map, and then if it has flowed within the last 40 years you still have the right to that riparian claim. But, don't you think there is a break-off after a private individual has invested, paid taxes on his home, on a business, on a piece of ground, and the State can't come in and say, "100 years ago, the tides went through"?

MS. YASKIN: If there is a matter of constitutional law and the citizens want to determine that the State has had an opportunity to delineate its claims, and that has to be based, I think, on the reality of what experts tell us. If after that, a constitutional amendment were to be considered by the people that said adverse possession ran against the State, I do think that would be something that the voters may want to consider.

What this resolution provides is an unrealistic time frame for the State to delineate its claims.

Let me add one other factor with regard to the 40 year provision. In addition to other problems that I have already delineated, what this requires the State to do is not only continue with its mapping and the expense attendant thereto, but also has an added burden, "When was the land no longer flowed?" It is no longer a question of whether it was flowed; it is now a question of when didn't it flow. And, you and I can both envision the litigation. Did it flow 39 years ago? Did it flow 29 years ago? Did it flow 50 years ago?

Let me point another problem out that I see with this litigation. Suppose someone, 45 years ago, dammed up a stream by his own efforts, in violation of what is State policy. Is he to be given the benefit?

SENATOR PERSKIE: No, assert a claim against him.

MS. YASKIN: Well, this resolution wouldn't allow me to.

SENATOR PERSKIE: It certainly would. It gives you a year and one-half to do so.

MS. YASKIN: An insufficient time within which the State can delineate its claim.

SENATOR PERSKIE: That's argumentative. The question of what--

MS. YASKIN: That's fact, Senator.

SENATOR PERSKIE: It is not fact; it is a statement. The question of what is a sufficient period of time is a subjective statement that includes a great number of policy determinations. What is a significant amount of

time from June 5, 1981, dating as far back as you want to take it, whether to 1968 or earlier, in terms of that State's doing a job that the Constitution, in theory, gave it to do a long time ago?

MS. YASKIN: The Constitution never gave the State the duty to map its claim, sir.

SENATOR PERSKIE: It gave it a power to do so.

MS. YASKIN: There is always power for the State to do it, but the legislature had not enabled it nor required it.

SENATOR PERSKIE: Let me, for the record, indicate the presence, some minutes ago, of Senator Russo from Ocean County, who is also a member of the Senate Judiciary Committee, and who I think wishes to be heard here.

SENATOR RUSSO: Just one question. You may have covered it, Judy. What do you deem a sufficient period of time to be?

MS. YASKIN: Approximately seven years, Senator. Good morning, Senator Russo, how are you?

SENATOR RUSSO: Good morning.

MS. YASKIN: Mr. Kinsay is here from the Department of Environmental Protection. That is the best expert judgment we have at this time, and I will tell you that we are employing Mr. Fitzgerald, who is an eminent expert in tidal flow lands for shore properties. He will be in the State in June. That is an added aspect. We want to develop overlay maps to our riparian claims. There is much underway with regard to the delineation of our claims. But, our experts say seven years.

SENATOR RUSSO: The other question I have for you is, you pointed out the possibilities of litigation as to whether land flowed 39 years, or 41 years; that would apply, of course, no matter what time period we drew.

MS. YASKIN: No, it wouldn't.

SENATOR RUSSO: Why?

MS. YASKIN: Right now the only thing the State has to do is prove that it was flowed, and when it ceased to be flowed is irrelevant to the litigation.

SENATOR RUSSO: In other words--

ASSEMBLYMAN GORMLEY: It could be 1800.

MS. YASKIN: That's correct, sir. It could be since God created the earth. If the tide flowed there, that is the status of riparian lands. That is the concept of riparian lands from English law.

SENATOR PERSKIE: As a matter of fact, if you think about it thoroughly even some theories that the entire continent was once under flow, you could make a convincing case on that basis, that every piece of ground in the State would be riparian land.

MS. YASKIN: Mr. Abelson indicates to me tidal flow is maximum in the State 1664, March 12th. I do not know how March 12th was ascertained.

SENATOR PERSKIE: I see. Mr. Abelson is therefore, I presume, able to make a determination as to what on March 11th was not tidal flowed?

MS. YASKIN: No. I would assume not. Most of our maps have been dealing with the 1800's. Much of the cartography before that didn't deal with the expertise that we would need. Primarily we are dealing--

SENATOR RUSSO: Senator, in my day you were allowed three questions. Have you cut it down to two?

SENATOR PERSKIE: Senator, I do apologize. I'm sorry.

MS. YASKIN: I'm sorry, Senator.

SENATOR RUSSO: Your concept then is that there shouldn't be any time period at all. You would stay with the present law and the present status of the Constitution?

MS. YASKIN: Yes, I would. I wanted to review this in terms of where I think the impetus for this came from, primarily the State's riparian claims in Atlantic City. There is not one development that has been prevented from continuing there. We have met with every developer in Atlantic City.

SENATOR PERSKIE: On what terms?

MS. YASKIN: Fifteen percent of our total claim rights.

SENATOR PERSKIE: Let's make sure, as long as you made that assertion, that we get the record right.

MS. YASKIN: By the way, Senator, it is interesting to note that the people we have contracted with have given the State three years on a voluntary basis to assert themselves.

SENATOR PERSKIE: Have you ever heard of a contract of adhesion?

MS. YASKIN: Are you saying that these poor developers were so inept and so lacking in legal talent and so helpless that they did not have resources to draw on?

SENATOR PERSKIE: I am not suggesting either that they are poor, inept or lacking in any of that. I am suggesting that in economic reality they were required to enter into some rather interesting arrangements. As long as you mentioned it, I think the record should reflect - and you may correct me if I am wrong - that the basis upon which they have been permitted by the State to proceed is that they make to the State a non-refundable payment in the amount of 15 percent of what the State estimates the value of what a claim would be if, in fact, the State had a claim, and that the State has a period under that contract of three years, within which to decide whether it has a claim.

MS. YASKIN: That is correct.

SENATOR PERSKIE: And if it decides it doesn't have a claim, then they get to keep the 15 percent; and, if they decide that they do have a claim, then you fight about it. Is that essentially it?

MS. YASKIN: That is essentially it. However, the 15 percent is a minimum price that would be paid for a cloud on title. In developing that process, what we determined was, in fairness, part of that 15 percent goes to research the very claim of the State.

SENATOR PERSKIE: I understand that.

MS. YASKIN: And part of it represents a removal of a cloud on title and says, go ahead.

SENATOR PERSKIE: Part of it is extortion too, isn't it?

MS. YASKIN: No, sir. Senator, let me point out something: Many of the developers in Atlantic City know of our riparian claim and have determined not to communicate or to negotiate with the State. They have proceeded to build bridges, closed off streets, built on potential riparian gores and they determined not to deal with the State. They determined that they would build at their risk and let the State prove their claim in later days. The only people whom we have agreed with - the Play Boy type of agreement that you have described - are applicants who came to us and said, "We want a resolution now." There are literally 20 to 30 builders in Atlantic City who have determined not to bother talking to the State, to proceed, to build over low riparian lands, including bridges over street ends, which are clearly riparian.

SENATOR PERSKIE: Anybody who does that does so at his risk.

MS. YASKIN: That's right.

SENATOR PERSKIE: That's clear.

MS. YASKIN: But I don't want you to understand that this is extortion or that we are preventing development. Go ahead. If you want to deal with us, if you want a resolution of your problem, come talk to us.

SENATOR PERSKIE: If you want to obtain financing from an institution that

will require a clear title, something as inconsequential as that --- But I don't want to let the focus on this be on the poor casino developers because I don't accept your statement earlier that that is the major impetus for the initiation of these proposals to begin with. And I think before the day is out, we will make a little bit of that case as well.

The fact of the matter is, as you have indicated, that it is at least as realistic to assume that the State has an interest in riparian lands that would be affected by this in the other 20 counties as it does in Atlantic County; isn't that right?

MS. YASKIN: Oh, absolutely.

SENATOR PERSKIE: And that interest isn't even limited to the shore communities. Is that right?

MS. YASKIN: That is true and that is why I have suggested to you that if the State were to be given an opportunity, a time frame which was realistic, to assert its claims, then I think it may be very appropriate that this State be the first state to say, "Thank you, experts, you have done your job. Let's have adverse possession run against the State."

SENATOR PERSKIE: Three hundred and seventeen years is not sufficient?

MS. YASKIN: Sir, that is unfair. What we have had since 1968 is the first indication of a determination by the Legislature that we ought to map the Meadowlands.

SENATOR PERSKIE: Thirteen years is not sufficient?

MS. YASKIN: Only the Meadowlands, sir.

SENATOR PERSKIE: Why the Meadowlands?

MS. YASKIN: I don't know. The Legislature chose that. I did not, sir.

SENATOR PERSKIE: Wait a minute. You said that the department or the State government was going ahead without legislative authorization.

MS. YASKIN: That's right.

SENATOR PERSKIE: But why are we sitting here in June of 1981 and saying that the homeowners and the property owners that are in the Meadowlands are okay, but everybody in South Jersey has to wait another seven years? Where does that come from?

MS. YASKIN: Absolutely not. We have been working in South Jersey.

SENATOR PERSKIE: But you haven't gotten it done and you are now sitting here telling us you can't do it for another seven years.

MS. YASKIN: As it took ten years to get the Meadowlands done - I'm sorry - a little less than ten years --- I just finished explaining that our mapping was accepted by the court in 1980.

SENATOR PERSKIE: This doesn't have anything to do with when your mapping would be accepted.

MS. YASKIN: Senator, we only have so much money and so many staff that can do the mapping.

SENATOR PERSKIE: And you spent it up there and not down here.

MS. YASKIN: No, sir. There is mapping in Monmouth County, in Ocean County, in Atlantic County, in the Pinelands. Not so, sir - there is mapping. There are tentative maps ----

SENATOR PERSKIE: Okay. All of the lands that are mapped in Monmouth and in Ocean and in Atlantic and in the Pinelands and all the rest - all of those lands wouldn't be affected one iota by this, would they?

MS. YASKIN: The mapping, sir, is not complete. The mapping is ongoing.

SENATOR PERSKIE: The lands that are completed by way of mapping wouldn't be affected by this, would they; and we wouldn't be giving anything away by that, would we?

MS. YASKIN: If you give us seven years, we will complete the mapping.

SENATOR PERSKIE: Maybe.

MS. YASKIN: I am saying that if you by constitutional amendment put that in as a provision, then clearly that is the end of the State's claim.

SENATOR PERSKIE: So what we are really fighting about today is the difference between seven years and a year and a half, right?

MS. YASKIN: And the ultimate policy of whether this is wisdom and that you have expressed should be passed on to the voters. But, as a minimum, that time frame I think has to be provided.

SENATOR PERSKIE: The essence of what you are saying boiled down to simplistic is that if this thing said seven years, you really wouldn't have any objection to submitting the policy question to the voters. Is that right?

MS. YASKIN: I think the voters have to be apprised of whether or not this State wants to be the first ever to give away its riparian lands.

SENATOR PERSKIE: That's a policy question, isn't it?

MS. YASKIN: That's a policy question.

SENATOR PERSKIE: You are saying you really wouldn't have any problem about the form of that policy question being submitted to the voters if instead of a year and a half it said seven years?

MS. YASKIN: I dislike the form of this 40-years flow because I think it puts another burden on the State with regard to determining when the flow stopped and I don't think that is the issue. I think if we wanted to talk about adverse possession running against the State and a constitutional amendment, it is a policy issue that could be considered once the State has had an opportunity to claim.

SENATOR RUSSO: But, Judy, is it fair to say that the State would be giving away its riparian lands? Isn't what this is all about really the question of whether or not these were riparian lands - what the definition should be?

MS. YASKIN: Absolutely. And the opportunity to delineate those claims is what I am begging for here.

SENATOR RUSSO: I understand. The question that Senator Perskie raises is whether or not you have had enough time, whether or not seven years is too much. If we were here talking about a year, as compared to two or maybe even three, perhaps it is something to be compromised.

But the question here really is, as I see it - and I didn't quite like the expression about giving away riparian lands because I don't think any of us want to do that - is whether or not these are riparian lands. The fact that no other state has gone into the definition of riparian lands is not a basis for saying we are giving anything away. The question really is: If you have a piece of land that hasn't had flow on it for 40 years, is it riparian land?

MS. YASKIN: Yes.

SENATOR RUSSO: That is what the issue is.

MS. YASKIN: It clearly is. The fact that it has not been flowed for 40 years, by law, throughout this country would recognize it as riparian land. If it was once tidally flowed, it is riparian land.

SENATOR RUSSO: Well, I had better get the next question in fast before Senator Perskie starts again. He has gotten tough. Is it your feeling that the definition of riparian lands - and I think the answer is yes - should be land that has been flowed by tidal waters at any time since the dawn of time?

MS. YASKIN: No, in this State, Mr. Abelson gave me the date of 1664. If we want to turn to him, we can find out why that date.

SENATOR PERSKIE: That is probably the date of the charter to Berkeley and Carateret, I suspect.

MS. YASKIN: Charles to John. John to the West Jersey Board of Proprietors and the East Jersey Board of Proprietors.

SENATOR RUSSO: Your feeling then is that anything that is flowed at any time since 1664 should be riparian lands - it should be the definition - and we shouldn't attempt to do anything about it?

MS. YASKIN: No, sir. I think that that is the law in this country that the states' rights --- In essence, if I can be historical, "the king owned the land" was the old theory in England. When we, the State became an entity, the right to the king really passed to the entity of the state. What you are saying is that formerly tidally-flowed lands since the State - and naturally it wasn't the State then, but the Board of Proprietors - has had possession of the land, the rights of those formerly tidally-flowed lands do belong to the people since we are not a democracy as opposed to a kingship.

SENATOR RUSSO: So then the basis, if I can put words in your mouth - I think they are correct - of your position is not an environmental one.

MS. YASKIN: It is a public trust concept.

SENATOR RUSSO: That is what I am getting at.

MS. YASKIN: It is a public ownership concept.

SENATOR RUSSO: Let me get to the rest of the question now. It is not an environmental one, but rather a basis of legal claim to ownership.

MS. YASKIN: Yes, sir.

SENATOR RUSSO: What you are saying is, "Hey, the king or somebody else ---

MS. YASKIN: Us, the people - we, the people.

SENATOR RUSSO: "--- were given title to these lands in 1664." And they only used as a convenient form of description, "Water has flowed over these lands and they are yours." That is how they decided which ones they were. The fact that the flow has ceased, you feel has no effect and should have no effect upon the legal claim of ownership.

MS. YASKIN: No, sir.

SENATOR RUSSO: Is the answer, no, sir ---

MS. YASKIN: No, sir, it should not have any effect.

SENATOR RUSSO: So it is really a legal basis and not an environmental one at all.

MS. YASKIN: That is correct. Environmental in this sense - and this is the public trust concept of ownership of property - about the rivers and the bays and the waters and the formerly tidally-flowed land. It is the legal theory of public trust for the people.

SENATOR RUSSO: But nothing to do with environment.

MS. YASKIN: Only to the extent --- I don't think we talked about environment when this concept was evolved. We now speak of our lands and our waters and our bays as our environment and precious environmental resources. But, no, it is not environment in the sense --- I don't know. It is environment in the sense I spoke of, the public trust, the people's interest in the land.

SENATOR RUSSO: That is not environmental at all, Judy, is it, environmental in the sense we all know it, unless I misunderstood the term? If your argument was based on environmental reasons, I assume you would be arguing, "Hey, if we allow building on this land, it is going to adversely affect the econology, etc." But

we are not arguing that.

MS. YASKIN: No, no, no. Much of this land can be developed and has been developed.

SENATOR RUSSO: And, in fact, you have no problems with the development of it. You simply say it should be considered as riparian land the developer pay for it.

MS. YASKIN: Let me put a caveat to that, Senator. In the legislative mandate for the Tidelands Resource Council, they have a duty to evaluate whether or not it is in the public interest environmentally to alienate riparian land. In other words, in their deliberations, they have to be concerned with the condition of the land, the pristine quality of the land, or lack thereof. And, in making a determination, they may determine not to grant riparian land on the basis of environmental sensitivity.

SENATOR RUSSO: But that is another issue. That is an issue that really doesn't belong in this discussion at all.

MS. YASKIN: Well, to the extent that this resolution would affect undeveloped land, that would be the right of the Tidelands Resource Council to evaluate, yes.

SENATOR RUSSO: On another basis, the same as they would have that right in any piece of land. The only issue here though is a legal one.

MS. YASKIN: They won't have the right to evaluate it if the land is gone. I'm sorry, Senator. Excuse me for interrupting.

SENATOR RUSSO: Wait a minute. Whether the land is considered riparian land or not, they still have to go to these various agencies that have jurisdiction for their permits, and so forth. This doesn't change that at all, or does it?

MS. YASKIN: It does to the extent that a property might be outside of a CAFRA or a wetlands area where there is no environment control. It could well be that formerly tidally-flowed land would be undeveloped and the Tidelands Resource Council would have the opportunity to determine its condition and determine it should or should not be alienated.

SENATOR RUSSO: The Tidelands Resource Council would have the opportunity whether or not this constitutional amendment passed, or wouldn't they?

MS. YASKIN: No. If this constitutional amendment passes, that land would not be riparian and, therefore, not subject to the jurisdiction of the Council.

SENATOR RUSSO: Okay. The fact that it is not included in CAFRA or the Wetlands --- Incidentally, is there very much of this land that we are talking about that wouldn't be included in either CAFRA or the Wetlands or the Pinelands?

MS. YASKIN: Mr. Abelson rightly points out the mapping would be very helpful to be able to answer your question conclusively.

SENATOR RUSSO: Yes, I know. But rather than wait seven years for an answer, what would you say?

MS. YASKIN: There are some lands outside CAFRA and the Wetlands.

SENATOR RUSSO: There is very little though, isn't there?

MS. YASKIN: Yes. The Pinelands, for example, has some tidelands which are not CARFA and not Wetlands in the Preservation Zone, not the Protection Core, but the Preservation Zone south of the Expressway, I believe.

SENATOR RUSSO: But, basically, our issue here is one of legal ownership ---

MS. YASKIN: Yes, sir.

SENATOR RUSSO: --- and really comes out of the question of whether or not the definition should or shouldn't be changed, whether or not land that hasn't been

flowed, whether it is 40 years, 30 or 50, should be considered riparian land. It is that simple, isn't it?

MS. YASKIN: Yes.

ASSEMBLYMAN GORMLEY: You talked about all the money that is going to be lost to the State. You must have a general idea of the acreage that could possibly come under the riparian claims. Do you have a general idea?

MS. YASKIN: Generally, the last time I talked of Absecon Island, if our claim is established to the gore, it may be as much as \$35 million. I can't give you the rest of the State.

ASSEMBLYMAN GORMLEY: That includes the housing portion of Atlantic City also?

MS. YASKIN: No. What it does include is the marina, however. The marina area which is being developed is mapped. The maps have not yet been adopted by the Tidelands Resource Council. We are getting 100 percent of fair market value in the marina area.

SENATOR PERSKIE: Excuse me. The marina area has been mapped?

MS. YASKIN: A draft map is prepared and has not been adopted by the Tidelands Resource Council.

SENATOR PERSKIE: But if this passed, they would have a year and a half from now to adopt that, wouldn't they?

MS. YASKIN: For that map, yes, sir. But I keep trying to express to you that ---

SENATOR PERSKIE: I am taking one step at a time, Judy. So this resolution, if adopted by the people, wouldn't affect your claims to the marina area, would it?

MS. YASKIN: No, sir. If this just related to the marina, we would be in good shape.

ASSEMBLYMAN GORMLEY: But the point is, the year and a half, because of the high value of everything now in Atlantic City, you could concentrate and make sure that you had taken care of those higher claims if you cared to, if you had a valid claim.

MS. YASKIN: What we have tried to do is, where we have this kind of mapping --- As I told you, we are not "proactive." We don't go out and seek --- We can't at this time. We don't have the manpower. The Legislature has not given us either the money or the manpower to do so. When the applicants come to us, whether they are from Ocean County or Atlantic County, we respond to their request for information. Where we have come to a close resolution of the mapping, we sit with them. We make our maps available to their surveyors and to their analysts and to their lawyers. If we can come to a resolution of their claim, we resolve them.

In the marina area, we are already receiving 100 percent of fair market value.

ASSEMBLYMAN GORMLEY: Let me ask a couple of questions. The original problem with Atlantic City was a map from 1852. Those were called Vermuelle maps?

MS. YASKIN: Yes, sir.

ASSEMBLYMAN GORMLEY: There is a similar Vermuelle map that deals with an island called Brigantine, same concept. Based on the concept of the Vermuelle map, is there the potential that you might have a claim against single-family property owners in that town? If you might have the claim against the developers, then you might have it against the single-family property owner - is that correct - because it is a legal concept? It doesn't go to the nature of whom you are going against; it goes to the claim.

MS. YASKIN: On Absecon Island what we are primarily concerned with is the

marina and the North Shore area. It does not run ---

ASSEMBLYMAN GORMLEY: Excuse me. I am asking a question. You are not answering the question.

MS. YASKIN: I am telling you our initial survey does not see a problem in that area of the island.

ASSEMBLYMAN GORMLEY: What I am saying is, if based on a Vermuelle map, in one town you might have a claim, might you not have a claim in another town if we are going to be legally consistent?

MS. YASKIN: I'm sorry. I just don't understand.

ASSEMBLYMAN GORMLEY: Mr. Abelson, the original problem with Atlantic City was based on some old maps, correct?

MR. ELIAS ABELSON: That is correct.

ASSEMBLYMAN GORMLEY: I don't want to limit you too much. If I get a few yeses or nos, then you can go further. If you take the older maps as they apply up and down the coast of New Jersey, you might have a claim in any other sector along the coast, based on these old maps from 1840 or 1850, is that correct?

MR. ABELSON: It is conceivable that there are early maps which would indicate the existence of tidal flow interior of the existing high water line. Whether that would give rise ultimately to a claim would depend on the manner in which filling occurred between the earlier line and the existing line.

ASSEMBLYMAN GORMLEY: Which is a question for the proofs that would be presented if it were to go to litigation?

MR. ABELSON: That is correct.

ASSEMBLYMAN GORMLEY: My question is: You have talked about a lot of money that would be lost under this concept to the School Fund. Then you must have an idea of the acres that are involved. If you come in and say you are going to lose a lot of money, then you must know the acres; and, if you know the acres, I want to know how many homes are on those acres.

MS. YASKIN: That is why I am saying we need seven years. I can't give you ---

SENATOR PERSKIE: Where did the number come from? Where does the \$35 million come from?

MS. YASKIN: That is Absecon Island. That is the North Shore and the marina of Absecon Island.

SENATOR PERSKIE: You have already established, Judy, unless I am in another world, that the marina would not be affected by this at all. Didn't we establish that five minutes ago?

MS. YASKIN: That deals with the marina. What do I do about the rest of the State?

SENATOR PERSKIE: How much of the \$35 million is in the marina?

MS. YASKIN: I don't have the delineation. I have about 40 blocks on the North Shore that are involved. If this resolution were dealing only with Absecon Island, Senator, I wouldn't be concerned about seven years.

SENATOR PERSKIE: Then let's take the \$35 million. Can you map Absecon Island in a year and a half?

MS. YASKIN: We have indicated we will be completed in a year and a half.

SENATOR PERSKIE: Fine. So the \$35 million figure is irrelevant because in a year and a half if this passes you have Absecon Island mapped. Isn't that right.

MS. YASKIN: Yes. What I can't tell you is the untold millions in land outside of Absecon Island.

SENATOR PERSKIE: One step at a time. One step at a time. You appeared on

May 4th before my committee and you said that this resolution would cost the State \$35 million. We now know that if it passes in this form ---

MS. YASKIN: Untold millions.

SENATOR PERSKIE: You said \$35 million. At least that is what the newspaper in Atlantic City chose to report that you said.

Now, let's take that. If this resolution passes and you have a year and a half from today to map Absecon Island, you can do that, can't you?

MS. YASKIN: Yes.

SENATOR PERSKIE: So it won't cost you anything for the lands that are on Absecon Island, will it? The School Fund won't lose a dime on account of any claim that the State may or may not have on Absecon Island if you in a year and a half map Absecon Island?

MS. YASKIN: If that ---

SENATOR PERSKIE: Okay. So that takes care of \$35 million. Now we are worried about the untold millions. Didn't you say ten or fifteen minutes ago that the prospects for applying this problem are very remote in some other areas?

MS. YASKIN: No, sir.

SENATOR PERSKIE: What did you say about being very remote?

MS. YASKIN: I think you raised the spectre of kicking people out of their homesteads and I said in the course of the litigation and the history of this that has never occurred and it is a remote possibility.

SENATOR PERSKIE: For the record, I never raised the spectre of kicking people out of their homesteads. What I raised and raise again is the real possibility that the State has a riparian claim on lands that are used for other than commercial purposes.

MS. YASKIN: Yes, they do.

SENATOR PERSKIE: Is that remote or is it not remote?

MS. YASKIN: That is a possibility which the mapping would delineate.

SENATOR PERSKIE: So we don't know if it is remote or not remote?

MS. YASKIN: Senator, my whole point in starting this testimony was, we don't know what the State owns - and give us the chance to find out.

SENATOR PERSKIE: Then the untold millions to which you refer could be as much as untold from the high side and, if it is very remote, it could be untold from the low side. Isn't that right?

MS. YASKIN: That is correct. We don't know what we have. What I am saying is: give us a chance.

SENATOR PERSKIE: The \$35 million figure is out, isn't it?

MS. YASKIN: The \$35 million figure, Senator - when we testified before your committee, you had no period of statute of limitations.

SENATOR PERSKIE: We put one in, didn't we?

MS. YASKIN: And you put a year and a half in. But this resolution is not Absecon Island. It is the State of New Jersey.

SENATOR PERSKIE: But the \$35 million on Absecon Island isn't affected, is it?

MS. YASKIN: Potentially, not affected if we have a year and a half for Absecon. If you give me a year and a half for the State, where do I move, Senator?

SENATOR PERSKIE: The story, for example, in this morning's newspaper in one of the major metropolitan newspapers of the Eastern Seaboard that suggests this is going to cost the casinos a lot of money, in fact, isn't so if as a policy determination the State moves to map Absecon Island first. Isn't that right?

MS. YASKIN: Why should we have a constitutional amendment with that when I already have that agreement with developers --- when I am already able to arrange that agreement with developers? I am already able to preserve that by contractual relationships.

SENATOR PERSKIE: Do you want me to have that question read back? Let me rephrase it. The fact is that if this amendment is passed and if you do your mapping in Absecon Island in a year and a half, this resolution won't have anything to do either with the Island or with the development of the industries on that Island, will it?

MS. YASKIN: Of course, it will, Senator. What it gives us is the burden of the State. Where do we decide where we put our resources in that year and a half?

SENATOR PERSKIE: If you adopt the maps within a year and a half ---

ASSEMBLYMAN GORMLEY: But hadn't you said some of the money you have already gotten, you are using that particularly for mapping on that Island. That 15 percent - you said you were using that money for mapping on the Island.

MS. YASKIN: Yes, of course.

ASSEMBLYMAN GORMLEY: You already have the resources for that and you are already doing it. So you are not reallocating resources that would have gone anywhere else in the State. The people from whom you are getting the money are paying for it.

MS. YASKIN: Resources and personnel are one thing. I have a limited staff. If you want to talk to DEP about it, if you think that they can drop everything and go to Absecon Island, they have not done that.

SENATOR PERSKIE: They sure have not. But the question that I am asking is ---

MS. YASKIN: I would think the rest of the State would find that somewhat abhorrent, that on behalf of the casino entities, they should drop everything they are doing for the rest of the State.

SENATOR PERSKIE: No, no, Judy, it wouldn't be on behalf of the casinos, would it? It would be on behalf of the State's claim on those properties, wouldn't it?

MS. YASKIN: No, sir, it would be at the behest of those casino entities who said they wanted a resolution of their problems now. There are many casino entities, I indicate again, and developers, not just casino entities, who are going forward without resolving the State claims. And their developments are being built today.

SENATOR PERSKIE: And you would be able within a year and a half to define and assert against them whatever claims the State had, wouldn't you, and then, eventually to collect on them?

MS. YASKIN: We have three years for some claims, a year left on some others; but that is all under contract. What does the constitutional resolution --- This isn't for Absecon Island. You keep telling me, Senator, this isn't for Absecon Island. Yet, I can't understand, if it isn't, what purpose does it serve? Why shouldn't the State be allowed to map the rest of its claims throughout the State?

SENATOR PERSKIE: I will tell you that very specifically. You should be required - not allowed - you should be required to map the rest of your claims throughout the State and you should have been required to do so a long time ago. That is what this resolution says.

MS. YASKIN: And if this resolution is that we should have been required a long time ago and, if what you are saying is because we weren't required, you now

want to put an unrealistic limitation of a year and a half to accomplish something that is impossible, a task that cannot be accomplished, for what purpose?

ASSEMBLYMAN GORMLEY: It goes beyond that. It goes beyond just getting the mapping done. Assume it is 1600 whatever or assume it is 1775. I don't care if you can prove back to then. I think if a person has had ground for 40 years, paid taxes on that ground for 40 years, that is the end of it.

MS. YASKIN: That is not what this resolution does.

ASSEMBLYMAN GORMLEY: That is precisely what it does.

MS. YASKIN: It has nothing to do with the length of his possession, nothing to do with whether he paid taxes. None of those things are relevant.

ASSEMBLYMAN GORMLEY: Yes, it does.

MS. YASKIN: No, sir. All this says is, if it was tidally flowed less than 40 years ago, it is yours.

ASSEMBLYMAN GORMLEY: If it is not a private individual paying taxes, it is a municipality. Who else is there?

MS. YASKIN: Oh, there are undeveloped areas - certainly, the Pinelands is an example of that - where there is territory that has been owned and undeveloped by private individuals. What if you or I were to walk into ---

ASSEMBLYMAN GORMLEY: Have they paid taxes on it for 40 years?

MS. YASKIN: Certainly. We have histories of taxes being paid.

ASSEMBLYMAN GORMLEY: Are they subject to environmental controls from the Pinelands Commission?

MS. YASKIN: It depends in what area.

ASSEMBLYMAN GORMLEY: Believe me, they are.

MS. YASKIN: The Protection area.

ASSEMBLYMAN GORMLEY: So you have full environmental control when an individual has paid taxes for 40 years on the ground, right?

MS. YASKIN: There is potentially that kind of situation, certainly.

ASSEMBLYMAN GORMLEY: Potentially, there isn't any other situation unless the municipality owns it.

MS. YASKIN: In some instances --- Assemblyman, if you wish me to go into that. In some instances, there are situations in the 1930's where much of this went into municipal coffers. The tax sale certificates were placed in the municipalities because of the depression. So, in many instances, in the '70's when the development started in the Pinelands, individual speculators were buying up tax sale certificates in the Pinelands for very low dollars. They were not paying taxes for 40 years. They were paying them for 4 and 5 years. But they would get the benefit of this. They speculated in land in the '70's when the Pinelands were concerned about the preservation of the development in the Pinelands. They bought for very cheap tax dollars while no one paid taxes on those properties since 1936 and 1935 in the depression while they sat empty in municipal coffers. Now, regardless of the length of their ownership and regardless of the taxes that they have paid or their predecessors didn't pay, because the land is no longer tidally flowed, it is theirs.

ASSEMBLYMAN RUSSO: Judy, carrying on the question before the committee in the impartial and unemotional manner that we have so far ---

MS. YASKIN: Sorry to get hot, sir.

SENATOR RUSSO: I wasn't referring to you. Realistically, can you arrive at a time period less than the seven years - I agree, too, it is outrageous - and perhaps maybe the one year is too short --- but can you arrive at a time period that

at least will prevent what some might call a rape of the public treasury and public lands?

MS. YASKIN: Senator, all I can rely on is the experts who have the responsibility to do it. Their best estimate at this time - and Mr. Kinsey is here - is seven years. If the Senator wanted to suggest a panel of experts to look at this and to come up with a separate time frame, that may be another approach. I can only go with the experts I have talked to, both in the department and the tidal experts that we are employing.

SENATOR RUSSO: Okay.

SENATOR PERSKIE: Are we going to hear now from Mr. Kinsey?

MS. YASKIN: Thank you, Senator Perskie, Senator Russo, and Assemblyman Gormley.

SENATOR PERSKIE: Thank you.

D A V I D K I N S E Y: My name is David Kinsey and I am the Director of the Division of Coastal Resources in the Department of Environmental Protection. I would like to clarify some of the points that have been raised here earlier by Assistant Attorney General Yaskin in terms of the mapping efforts underway. Yes, mapping did take place under the Wetlands Act of 1970. That was mapping only to delineate where coastal wetlands subject to that statute were located. Then, under that statute, DEP did provide individual notice to each property owner, had a public hearing in each county, and then adopted the wetlands order.

SENATOR PERSKIE: And, how long did that take?

MR. KINSEY: I believe that effort took more than a year and it cost more than \$1 million. It ended up delineating approximately 640,000 acres of coastal wetlands in Middlesex, Monmouth, Ocean, Eastern Burlington, Atlantic, Cape May, Cumberland, Salem, Gloucester, Camden, Burlington, and Mercer Counties.

SENATOR PERSKIE: And, it took less than two years, didn't it?

MR. KINSEY: It took two years, about two years, but that was only delineating the existing scene of where the regulated wetlands were located.

In terms of the tidelands delineation program, I think it is important to know that there are 731 mapped panels for the entire state. A mapped panel is about three by three feet. It is at a scale of one inch equals two hundred feet and that is the same scale as the wetlands maps. To date, the Tidelands Resource Council, pursuant to statute, has adopted twenty panels, again, primarily in the Hackensack Meadowlands district.

SENATOR PERSKIE: So, you have 711 to go.

MR. KINSEY: 711 to go in terms of adoption by the Tidelands Resource Council, but, as Ms. Yaskin pointed out, the Department has prepared map products, draft products, while various issues are being resolved, particularly the open beach delineation that she spoke about.

SENATOR RUSSO: What about the time period? Is there any kind of possible shortened time period that the state might be able to give, bearing in mind that if you stay with seven years the Legislature may think it is unrealistic and just stay with one, if they pass this? Is there any time period that, under the gun, could accomplish, at least, the bulk of what you have to accomplish in mapping short of seven years?

MR. KINSEY: For today's purpose, I would like to stand on the seven year time estimate, but I think the suggestion of a panel to explore the issue makes sense. The time necessary to complete the job depends on the people who are devoted to it, the amount of resources for the various surveys, aerial photographs, head of tide studies--

SENATOR PERSKIE: We can take a year or two to do a panel and then they would recommend seven years and that would give you nine. That's a good idea. Any further questions?

We have a number of legislators who have come down today to be heard on this. We will hear first from Assemblywoman Gluck from District 9.

A S S E M B L Y W O M A N H A Z E L G L U C K: Good morning, gentlemen. First of all, I just have a comment. Judith Yaskin has my undying respect. Anybody who could stand toe to toe with you, Senator Perskie--

SENATOR PERSKIE: She gave better than she got.

ASSEMBLYWOMAN GLUCK: Let me just say that I don't know much about kings, but I know a few things about peasants and if I can translate that into my feelings with regard to SCR 3023, you will know why I came here to support SCR 3023 and there are reasons for that, in Ocean County, that are different from what they might be in Atlantic, although maybe that's not even true. It is my understanding that the State of New Jersey is claiming all lands now or formerly flowed by tidal waters and that the state will claim ownership to any property for which there is any information which may sustain that claim and ancient surveys and maps which may pre-date the Revolutionary War--and I think that was verified by the Assistant Attorney General--are being used by the state to assert such a claim, notwithstanding the fact that the map or the survey was not prepared for the purpose of locating tidal creeks or shorelines and that these maps and surveys are not located in the public record, which is another thing, sometimes, which can be very difficult for people who own property, but may be found anywhere, at any time, thus creating a continued uncertainty as to what property may be claimed by the State of New Jersey.

The state, I'm also told, is presently investigating about one third of the land mass of the state with regard to these possible claims. All coastal shorelines, navigable rivers, bays, inlets, and salt marshes are under investigation. I did some checking as to what is involved as far as an average property owner, what they have to go through and right now, as I understand it, the property owners facing a potential riparian claim have, basically, two options. One, to sue the state and attempt to acquire the title or, two, to purchase a grant from the state. Either solution is costly and extremely time consuming. A typical riparian grant, I am told, the application takes approximately two years and it is a varying procedure. One, you have to have a pre-filing conference with the staff of the Tideland Resource Council; two, you have to make formal application, record the title search, survey, other information, at the option of the Council, that may be required of you. You have to have an appraisal, a public meeting of the Council, an execution of the grant by the Council, an execution of the grant by the Commissioner of the Department of Environmental Protection, and an execution of the grant by the Governor.

SENATOR PERSKIE: Don't forget, when you go through that last, the price changes between when the Council set the price--

ASSEMBLYWOMAN GLUCK: Exactly. The price can change and, of course, it is according to the price at that time, not only of the land, but I understand that there was a recent court ruling that said the improvements on the land as well.

There is also, to my understanding, no obligation on the part of the state to make a riparian grant; that is discretionary.

Now, from the point of view of the homeowner who finds himself or herself in this position, this is a very lengthy and very expensive procedure. I can only think of a couple of instances in Ocean County. One had to do with riparian grants with a development in Dover Township, Snug Harbor. Another had to do with a municipality down on the island that came into some land that they had no idea had been tidal flowed, went ahead to try to sell off the lots. They sold the lots off--this is about 20 years ago--and subsequent to the selling off of the property, there were some maps found that showed that it once had been tidal flowed. So, from the point of view of the municipality or from the point of view of the single, individual homeowner, under those circumstances, I think it is a tremendous burden for them that we're asking them to experience, to go through. Now, I agree with many of the things that were said here this morning. I am not going to debate the year and a half versus the seven years. I think that is something that the Committee is going to have to

consider. I would agree with you, John, that maybe there is a difference there that can be remedied in this legislation; but I think that, certainly, at the very least, that what we're talking about here is trying to bring some common sense into this process and I really think that forty years is sufficient time.

With regard to the fact that we talk about the school fund, I'm sure you gentlemen know--and I think it's a point that should be made--that at the start of this year that fund had like \$33 million in it, realizing a total of about \$2.5 million or \$2.6 million, which was transferred to the general fund. That comes out to about \$2.01 per student if, in fact, one could say that from the general fund this went into education. This is not interest that goes directly from the school fund. The trust stays there. It doesn't go directly. We don't have dedicated funds. It goes into the general treasury. So, what you're saying is, if you need to make a comparison between that bill and what you said with regard to the property, you're talking about \$2.01 per student, if you divide it by the number of students in the State of New Jersey versus that land and having it saleable and what it brings in.

So, I wanted just to come down here and say that there have been cases in our county where it has affected not large developers, but small individual people who have bought homes and then later on found out that, at one time, that property had been tidal flowed and, as a result of that, have gone into expensive litigation and expensive processes and had to repay the state not only for the property at the present value, but for the homes that were on it.

Also, I think we have another thing in Ocean County and that is, for instance, when we built the causeway to Long Beach Island or some of the other things that have been built there, some of that land was filled in by the State of New Jersey, by the Army Corps of Engineers. Who is to say that when the maps are finally dug up, that some of that won't have been tidal flowed at one time or another. But, that's already been done and done by a public entity.

So, I would like to support the bill. I think it brings some common sense to the whole problem and I think that's what we're looking for.

SENATOR PERSKIE: Thank you. Senator?

SENATOR RUSSO: Just one question. Hazel, when you said \$2.01 per student, you meant of the amount that was in the fund for this year?

ASSEMBLYWOMAN GLUCK: Yes, that was transferred into the general fund. If you were to divide that by the number of students in the State of New Jersey, it comes out to about \$2.01 per student.

SENATOR RUSSO: Of course, the big question that we're faced with, as you heard with Ms. Yaskin, is that she claims we don't know how many, as she put it, untold millions that that fund or the State would lose by this proposal and I think to throw around words like "untold millions" when she isn't prepared to support it nor we to dispute it doesn't make sense.

ASSEMBLYWOMAN GLUCK: Well, John, I think that the State has a right to have a reasonable time to do this. I just don't think that a reasonable time is forever and I think that's the point here. If the year and a half, the time limit of a year and a half, is really, in fact, not reasonable, then I'm sure the Committee will look at that. But, I think that the fact that this should not be made difficult for the people who have paid taxes, etc., all that was said here before, is important. I have also heard that this school fund is the reason--I heard that this morning--is supposedly one of the reasons for our triple A bond rating in the State of New Jersey and I would offer to you that I don't think that's exactly so.

SENATOR PERSKIE: For \$2 million a year, I can't see it either.

ASSEMBLYWOMAN GLUCK: Thank you, gentlemen.

SENATOR PERSKIE: Thank you. Assemblyman Hurley, Minority Leader in the Assembly?

A S S E M B L Y M A N J A M E S R. H U R L E Y: Senators and Assemblymen, I commend for proposing this legislation and for acting quickly to bring it to the public's attention, to have this public hearing and to, hopefully, get it on the ballot. I came here today to offer my support.

I am here, obviously, as a layman. The question of riparian rights and the state's claim--I'm not here trying to assert that the state doesn't have a claim or that we do anything of that nature. But, what I am here to say is that laws or claims made after the fact have always been repugnant to American citizens and particularly New Jerseyans have objected to taking without their consent property 34 years after the adoption of the 1947 Constitution or, if you want to calculate the years from 1844 and the school fund was created in 1817. The state government has not produced documents and will continue to produce documents, according to Deputy Attorney General Yaskin, that purportedly shows lands once flowed by the tide that were not known before. If the claim is made that the date, the starting date is 1664, then I submit to you that unless we have a 1664 map, you're never going to answer that question and even though it is fun and it makes work for attorneys on both sides of the question, it is not in the public interest.

SENATOR PERSKIE: Let's not get personal, now.

ASSEMBLYMAN HURLEY: I wanted to see if you were paying attention and I found out. On the land, for example, I speak specifically of Ocean City. I want to leave Absecon Island entirely alone and deal with the district I represent. One of the maps that has been produced in the last few months is an 1852 map that shows the land once flowed by tides three blocks inland from the present shoreline. People have built homes on that land and the people who have built on it and the people who bought from them received titles that were in fee simple, without exception. As a matter of fact, I am told that there was a period of time when the accretion, that part of the land that was built up from the ocean was actually encouraged by municipalities to be taken because it produced ratables and, from this, the owner or his successor were able to expect maximum benefits. Now, if you own that land or you think you own that land, you discover that you've been paying taxes on something that you didn't have. You didn't have the maximum benefits. The State is taken away the value without something in return. This, in my opinion, is an arbitrary act for which there must be a remedy and that's precisely why we're here today and is precisely why you've introduced this legislation. I understand that the state would argue against that, but from the peoples' point of view, they must be protected, there must be a remedy and there is not a 1664 map. So, I say to you that we are seeking a fair and reasonable remedy to this problem. I ask you to ask the question: Where is the burden? Is the burden really on the people to argue against the state or is the burden on the state? You spent a great deal of time here today with a member of the Administration staff developing this question of when they started the mapping. But, as a matter of fact, from a layman's point of view, logically speaking, the state had the responsibility from the very first time, 1664, 1817, 1844. I'm here today to represent the peoples' interest. The people should not be placed in an adverse position of arguing against the state. The state has to defend itself and it had the burden all of these years to develop these maps. It

is not Cape May County's fault, for example, that it happens to be geographically south of Absecon Island, which is a very specific example and we will be burdened this problem after Absecon Island has solved its problems. Is that fair to the people of Cape May. I submit to you that it's not.

The point was made here today that money has been lost and money will be lost and I say to you that it is money that the state never had because the state can't assert its claim unless it can produce that map of 1664.

I thank you very much for allowing me to come today.

SENATOR PERSKIE: Thank you very much. Assemblyman Gormley?

ASSEMBLYMAN GORMLEY: No questions.

SENATOR PERSKIE: Robert Ferguson, Executive Vice-President of the New Jersey Association of Realtors?

ROBERT FERGUSON: Well, the New Jersey Association of Realtors is here to support Assembly Concurrent Resolution 3037 and Senate Concurrent Resolution 3023. The cloud that hangs over the title to tens of thousands of acres--just so that we don't get tied up in this Absecon business--is in 17 of our 21 counties. I have a memo that Governor Hughes issued to the Legislature back in 1969 and he indicated that the area was some 250,000 acres, the potential was 250,000 acres. We're not talking about undeveloped marshland or meadowland. We're talking about the ownership of thousands of homes, commercial businesses and industrial operations and I would like to point out that this is not the first time that the Legislature has come to grips with this problem. In the 1960's, there were two bills that were passed that were eventually vetoed by the Governor and one Senate Concurrent Resolution that, I believe, fell victim to court action instituted by the Governor and was reversed.

I have heard the same arguments today from state government that I heard in public hearings in the mid 60's. I was part of the ad hoc committee that was formed at that time by the State Chamber of Commerce and I believe I'm probably the only one still active on the legislative scene that was involved with this whole riparian question.

To illustrate the scope of this, back in 1964, the Association sent letters to 188 municipalities advising them of the decision of the Appellate Court, which enlarged the concept of state ownership of riparian lands and I think this is awful important. Prior to the court decision, we understood riparian lands to mean those that were flowed by mean high tides. They changed it. The court changed it, not the Legislature and added the words, "or may have ever been flowed by mean high tides," even though it may have been manually filled at some time in the past. We feel that this extension, this reaching out in the court dictum, is what created the problems and I think we should resolve the matter today.

I think we have to put ourselves in the position of a property owner who has paid taxes for ten, twenty, or thirty years or even more only to find that when he goes to sell his property, he cannot convey the clear title and he may find that he doesn't own the property at all because, at one time, it may have been flowed by mean high tide. Title companies, most naturally, are reluctant to insure these titles and when we get back into the Atlantic and Cape May County areas, the situation, now, is compounded by the soaring values that have resulted from the advent of the casino industry. You're asking people, today, to buy riparian lands at today's values. I would suggest to the state, let's go back to when they first made their claim and maybe we could buy the riparian lands based upon a 1664 price or whatever the date was.

I mention the 250,000 acres that Governor Hughes referred to, about 5% of total land mass of the state. We feel that there is an alternative to the situation and that the two bills that are being discussed here today. The issue, in our opinion, is crystal clear. The 40 years, if it has not been tidally flowed for 40 years--and we're not happy with the amendment that gives the state another additional year to assert any claims. However, to move this type of legislation along, we would support that concept because we've waited too long. The cloud that was created in the 60's is still hanging over the state and it is becoming a problem. You are threatening potential tax bases in municipalities. Perhaps, what we should do is indicate to property owners, "Let's set up a special tax fund and instead of paying your property taxes to the municipalities where there may be the threat of a claim, let's put it into a special escrow account." The next time you have a meeting here, you will have the mayors of 177 municipalities here screaming about loss of tax revenue.

I think that we have to move forward. Let's not have another 20 years elapse before this issue is addressed. I know that in the mid 60's, when we were passing legislation, there was a genuine concern expressed by the Governor and many members of the Legislature as to the environmental issues and I might add that in the mid 60's many of us didn't understand what the Governor was talking about when he talked about sensitive environmental concerns. The Legislature has acted since then and has removed, through the Wetlands and CAFRA legislation, in my opinion, those real concerns.

SENATOR PERSKIE: Don't forget the Pinelands legislation.

MR. FERGUSON: The Pinelands also, yes. I would think--

SENATOR PERSKIE: The Wetlands Act and CAFRA.

MR. FERGUSON: Yes. The Wetlands Act and CAFRA, I think, have helped resolve many of these sensitive environmental concerns. In conclusion, we urge that this joint committee release a bill and get it, hopefully, legislative priority. It's important to the people.

SENATOR PERSKIE: Thank you very much. Assemblyman Gormley, do you have any questions?

ASSEMBLYMAN GORMLEY: No questions. Thank you.

SENATOR PERSKIE: Mr. Bennett, D.W. Bennett, the American Littoral Society?

D. W. BENNETT: Senator, I have a brief statement and I will just summarize it. Many of the things that I was going to say were said by Judy Yaskin earlier. The American Littoral Society is a private, non-profit New Jersey corporation with members interested in the coastal resources of the state and we are opposed to this constitutional amendment. I would really, I think, endorse what the Attorney General's office said and close by saying that I think what this is trying to solve a complicated, time consuming problem with a simple answer and the delineation is not easy. I think there are some environmental concerns. It's been our experience in working with the coastal area that the Tidelands Resource Council and the fact that the State had riparian claims on land was one of the best ways for the environmental values of those lands to be protected. I can see that an amendment like this may, in the future, impact on other sensitive lands, public trust lands, to the point where some of them which are not tidally flowed, filled, but not developed may pass over into development kinds of lands rather than the lands which may better be restored to their former uses, as natural areas, as flood control and what have you. Thank you.

SENATOR PERSKIE: Thank you very much. Mayor Edward Klein, City of Brigantine?

EDWARD KLEIN: Thank you, gentlemen. Thank you for the opportunity and thank you for letting the public speak at a hearing for a bill with great importance to all residents of the State of New Jersey.

Hearing the testimony today of the present Administration, the Assistant Attorney General of the State of New Jersey, I got a little upset because the City of Brigantine is a single family development. It is a small community with a large population of senior citizens. They are very concerned whether or not their property was ever flowed by tidal waters and hearing today that the State would like to go back to a 1664 map, there is a good possibility that Brigantine was in the Atlantic Ocean in 1664. People have been paying taxes there. It is an island and we are very, very concerned. The state is coming and placing a burden on senior citizens. They say they need seven years to map it. I'm afraid some of my senior citizens will be dead in seven years. They'll probably go a little quicker worrying about what the State of New Jersey is going to come and take away from them that they've worked their entire life for, bought and paid for, and now the State may come in and add an extra burden to them.

I'm also very concerned hearing today that the marina area has already been mapped. That's been a very hot issue for me as Mayor of Brigantine. You gentlemen are aware of that. The marina area is directly next to Brigantine. Speaking now as a citizen of this great State of New Jersey, I want Atlantic City to be successful. I think casino gambling is a star for our state and I want it to be successful. Here the State of New Jersey is going to come in now and say that the entire marina area is flowed by tidal waters. I would not be surprised to see MGM-Hilton say, "Goodbye, we're going back to the west coast." I don't think that's fair to the residents and to the people who voted for casino gambling and to the people of New Jersey.

The state is already preparing a claim on part of the MGM ground. I've been told that MGM has placed up to \$2 million down on that riparian claim. In the little City of Brigantine, we have a road that is a bottleneck to the residents getting on and off our island. The state is now trying to say that they don't have any money at all in their budget to help develop this road. Yet, they just received \$2 million from MGM on a riparian claim. It is hard to believe that the state wants, wants, but will not give. We have, today, heard testimony against this bill only from the present Administration. I am representing the people of Brigantine and I believe the residents there, in whole, support this bill and I hope you gentlemen will do everything possible to get it on the ballot. Thank you.

SENATOR PERSKIE: Thank you, Mayor.

ASSEMBLYMAN GORMLEY: Thank you.

SENATOR PERSKIE: Kenneth Smith, the New Jersey Shore and Beach Association?

K E N N E T H S M I T H : Gentlemen, I am the Director of the New Jersey Shore and Beach Association. We have organized as a chapter of the American Shore and Beach Association which is a national group of about 2500 coastal engineers, environmentalists and concerned citizens. We are in favor of this bill. We commend you for coming out with it.

I will be brief. We have formed in New Jersey to research and promote reasonable coastal land management programs, and effective erosion control projects. We feel that the State's attitude toward the coast as exemplified by the events of last summer with the Dune and Shorefront Act---

SENATOR PERSKIE: That is the proposed Dune and Shorefront Act.

MR. SMITH: The proposed Dune and Shorefront Act, which we had vigorously opposed and thought we had beaten only to see it rise again as part of the master plan--- It shows an attitude of overzealous environmentalism, and it was the impetus to our organization, to its creation. We have been talking with municipal officials from the coast, with engineers up and down the coast, and we are trying to come up with a plan that would preserve the beaches and preserve the economy of the region. We have a tourist economy going on \$7 billion a year, which is second only to the petrochemical industry. Everything has to run smoothly. The millions of people who come to the shore in the summer need facilities, and the last thing we need is to be backed away from the sea again, or away from what may have been the sea a hundred or a hundred and fifty years ago.

The riparian question quite simply is a monkey wrench. Before this question came about, we were concerned with saving the rights to properties we have owned and paid taxes on, properties which had an appraisal value, and which in many cases had bought and sold many times over. Now, the State of New Jersey has taken a quantum leap with the assertion that, "Well, we think we own your land, regardless of your chain of title, regardless of the taxes we have accepted on it, regardless of how long you have possessed it. Of course, you can buy it back from us at full market value."

SENATOR PERSKIE: Or you can rent it from us.

MR. SMITH: Yes, yes, which is crazy too. Now, perhaps in some cases the State is saying, well, we are not sure whether we own it or not, but we are going to take some time to map it. In the meantime, you can't transfer your property. We have already had some cases come up with that down around Stone Harbor and Ocean City where they couldn't get title insurance and couldn't sell their property. We think it is a ridiculous and unfair abuse of law if it is allowed to go on.

I would just urge you gentlemen to do what is reasonable and what is fair. The greatest quality of our legislative system is its ability to effect change. When a law is bad, when it no longer works, when it does more harm than good, we have the mechanics in our republic to change that law. This law is a classic example of a regulation that has outlived its time. It serves no other purpose than to extort money from those who in all fairness owe nothing more to the State than their property taxes.

I would like to thank you for the opportunity to speak here today. I believe you have the welfare of our coast at heart, and I wish you good luck with this bill. We are in favor of it.

SENATOR PERSKIE: Thank you very much, Mr. Smith.

Edward La Rue.

E D W A R D L A R U E : Senator Perskie, and Mr. Gormley, members of the panel, I consider it a privilege to be here. This is the first time that I have ever testified at a public hearing.

I have a problem hearing, but I think my hearing is good enough to have understood that the lady that testified when I was coming in said that this isn't a matter of taxation; am I correct? It was something to that effect.

SENATOR PERSKIE: I don't remember if we discussed taxation at all, specifically, other than the context of paying the taxes.

MR. LA RUE: Well, anyway, this is what the tea party was all about. This is what the Revolutionary War was fought about. It is tantamount to taxation without representation. Now, my family---

Incidentally, I am not representing a group. I am representing myself. All I have heard was testimony on Absecon Island and the casinos and so on. I would like to give you a little bit of a background of my problem.

My family has paid taxes on this property for forty years. And, the State has readily accepted it without a question until we got a buyer who was interested in the property. He applied for permits, and then the State stepped in and with a very simple statement, they say, "We think we own this property." With that statement, they put a cloud on my title. They scared off all buyers. They rendered the property useless.

SENATOR PERSKIE: Excuse me, you might have mentioned this, but what municipality was this in?

MR. LA RUE: This is in Linwood. Incidentally, it is on a tributary. It is on Hopatcong Creek, a title tributary. And, the state said at that time that the onus of proof is on me. I submitted tax bills. I researched the tax records a hundred years. I submitted tax bills; I submitted guaranty title, such as it was, and they said, "This isn't sufficient proof of ownership."

Now, if that isn't, what is? I would like to know what is. Another thing, if I remember right, the U. S. Constitution says that you can't set aside the property of the individual for the benefit of the public without just compensation. If paying taxes on property that you think that you own is just compensation--- I am confused.

SENATOR PERSKIE: Well, understand, Mr. La Rue, we are dealing here with a property which is by New Jersey Constitutional mandate not the property of individuals, but rather the property of the people as a whole. That is the theory under which riparian grants and riparian lands and claims are determined. What we are trying to do here is not interfere with the philosophy of a riparian claim, but rather simply to provide a procedure and a limit on the procedure in which the State defines and asserts its claim.

MR. LA RUE: Either am I. But, the point is, I have been fighting this. I brought it to your attention, I think, if you will remember, about three years ago.

SENATOR PERSKIE: I do.

MR. LA RUE: And, in three years, really, nothing has been accomplished. There is still a cloud on my title. I am still paying taxes on the land.

SENATOR PERSKIE: That is why we are here.

MR. LA RUE: Right. I don't know whether it is relevant, and if it isn't, you can stop me. But, I have deeds here, and I have easements that the State bought from me - just to show you the confusion in the State.

SENATOR PERSKIE: The State bought from you, or you bought from them?

MR. LA RUE: The State bought from me on property they say they own. I have also --- Incidentally, the property is jointly owned. Half of it is owned by an estate and half by me.

The State has collected inheritance taxes from the property they own. They threaten to sue the estate to collect the taxes, plus penalties. You know, the State has no policy for settling these problems.

SENATOR PERSKIE: And no timetable.

MR. LA RUE: That is right. I also have the deed where we purchased land from the City of Linwood right in the middle of all of this land that is in question. The Attorney General's Office has renounced any claim, past or prior, to that property. Now they are saying it is riparian lands. You know, there are so many---

I am sure that the State is not just picking on me. This has probably gone on with thousands of individuals.

SENATOR PERSKIE: Okay, I am sorry, did you have anything else?

MR. LA RUE: Well, one other point. The State, in a letter that I have from the State, says that the only equitable solution to my problem is to purchase this land at fair market value. Now, I would like to ask you, what is equitable about that?

ASSEMBLYMAN GORMLEY: Nothing. That is so inequitable that we would like you to make that letter a part of the record.

MR. LA RUE: Well, I don't have it with me. But, I do have it.

SENATOR PERSKIE: Send it in to our offices, and we will submit it for the record.

MR. LA RUE: I have a stack of records that high.

SENATOR PERSKIE: No, no, you don't have to send us that. You can just send us the letter.

MR. LA RUE: Those are about the only points that I would like to make. There are many more that I could make.

SENATOR PERSKIE: We appreciate your being here, and, if you would, as I said, communicate with my office and Assemblyman Gormley's on that last point we would appreciate it also. Thank you very much.

I only have one more witness listed, and that is David Moore of the New Jersey Conservation Foundation. Is there anybody else representing anybody else, including, without limitation, the New Jersey environmental lobby who wishes to be heard?

Okay, then, Mr. Moore. Thank you. You have submitted a prepared statement. We will instruct the reporter that the contents of the statement be included in its entirety in the transcript of the proceedings this morning.

D A V I D M O O R E: Thank you very much, Senator. I thank you very much for the opportunity to appear before you.

I am David Moore. I Direct the New Jersey Conservation Foundation, and I should say at the outset that I have another hat I wear that bears directly on this situation, and that is that I Chair the Tidelands Resource Council. I am here today not representing the Council, because we have not had an opportunity to meet to discuss this issue. But, I am here to represent the New Jersey Conservation Foundation.

The statement that I have prepared roughly follows the testimony of Mr. Bennett of the Littoral Society and also the Attorney General's Office on behalf of the Administration and the people of the State of New Jersey.

There are a couple of points I would like to clarify that I have picked up in the process of listening to the questioning that has gone on this morning. First of all, as I have said in the statement as well, I do agree that there needs

to be a resolution of the problem. New Jersey has lead this country in many ways. The fact that we are doing what we are doing now in terms of coming up with good and have come up with, coastal protection law, good environmental law, and a definition of the riparian issue, I think, all goes to our credit. I have been following, needless to say, the progress of this whole mapping process. It is an extraordinarily complicated process, a balancing act, if you will, between the rights of the people of the State of New Jersey who have had possession of the land below mean high tides since the King of England which has been testified to and those individuals that may have been affected by or are affected by an undefined record of ownership.

I think it might be useful just to spend a couple of seconds going back to the two points that were raised before, one with respect to environmental control. It has been my experience on the Council and in dealing with the Council that there has been a great deal of concern with environmental protection on the part of the Council members and in dealing with riparian issues. This is because, if you go back in history to the reason why these lands were set aside in the first place, it really is an environmental mandate. The King of England and his successors, the people of the State, have felt all along that this land was so valuable for its fish and wildlife benefits, for its navigational benefits, and for its public value that no individual should have the right to exclusively use it.

There has been extraordinary care taken to insure that these lands be protected over this 300 year period of time. What we are dealing here with are the rights, then, of the people of the State of New Jersey versus some individuals and in some cases many individuals who may be suffering a hardship as a result of the lack of definition, and that is a problem, and I do believe it needs to be solved, and I for one support its solution.

I do, however, feel that the time period that the State has indicated as a minimum is a pretty accurate one based on our experience in the mapping process so far. I would like to just make a couple more points of clarification with respect to some of the other testimony. Mrs. Gluck mentioned the case that has been before the Tidelands Council, the Stone Harbor matter, and I must say, in that case, the ---

SENATOR PERSKIE: I really don't feel, frankly, Mr. Moore, that we ought to be discussing any specific cases, and certainly not by name.

MR. MOORE: Mrs. Gluck mentioned it, and that is the only reason I am repeating it. So, it is already part of the record.

ASSEMBLYMAN GORMLEY: The only point I would make is, you are the Chairman of the Council?

MR. MOORE: Yes.

SENATOR PERSKIE: Is the matter still before the Council?

MR. MOORE: Yes.

ASSEMBLYMAN GORMLEY: Well, you can do what you want.

SENATOR PERSKIE: Well, go ahead, but I---

MR. MOORE: I just want to make one point of clarification, and that is that it has been a long time in settlement. There is no question about that. On the other hand, there certainly was knowledge on the part of the applicant of riparian law; the people who have been affected have been affected by the developer and not by the State.

The other point of clarification that needs to be made is that even though there may be early maps, that does not mean that the people of the State of New Jersey should accept them as a definition of a mean high tide line, whether it be the Vermuelle map or early or later maps. The proofs are rather complicated,

and they need to be examined very carefully. The major issue is what has happened since then, if there has been accretion as in the case of some shore communities that has taken place over time. The State does not own that land. The accretion has been slow and gradual, so even that has to be determined, which again makes for additional complications.

I do not support, in short, the process that you gentlemen have proposed. I think the State is doing an excellent job, this Administration, in the mapping process, and I think they ought to be allowed to continue.

SENATOR PERSKIE: Thank you. I would like to add a point of clarification of my own, if I may. Did you hear Mrs. Yaskin's testimony or statement that the mapping process with respect to Absecon Island could be completed within a year and a half from now?

MR. MOORE: Yes.

SENATOR PERSKIE: That would vitiate the impact of the remarks you make in paragraphs four and five of your prepared statement, would it not?

MR. MOORE: Perhaps.

SENATOR PERSKIE: Why only perhaps?

MR. MOORE: Well, because I think we are dealing here with a statewide issue, Senator, not just Absecon Island---

SENATOR PERSKIE: You weren't dealing with a statewide issue in the remarks you made in paragraphs four and five, were you?

MR. MOORE: No.

SENATOR PERSKIE: All right, then, what I want to know is if in fact she was right, that the Absecon Island could be mapped within that period of time and that therefore this resolution would have no effect, whatever, on the state's claims in that particular area, then these comments are wrong; aren't they?

MR. MOORE: If the State devoted all of its resources---

SENATOR PERSKIE: No, it didn't say all of its resources. It said if it was mapped within that period of time, whether by all or some of the state's resources.

MR. MOORE: Right, yes, that is so.

SENATOR PERSKIE: Are there any other questions?

MR. MOORE: I should make one other point of clarification, and that is, the only immediate benefit that I can see as a result of having to define the forty-year question, and whose burden of proof that is, would go immediately to those people where a definition has already occurred. Definition has already occurred in the gore areas, for example, in which the State has---

SENATOR PERSKIE: Why would it go to them at all? They wouldn't have anything to do with it. Why wouldn't the benefit of this amendment precisely be for those who haven't gotten definition? If there is definition, this resolution wouldn't have any effect whatsoever. The only lands that this Resolution has anything to do with are those that are not now defined that we are trying to define.

MR. MOORE: Yes, but the point is that one needs to know whether or not the forty-year period has elapsed which requires definition and a burden of proof on somebody's part.

SENATOR PERSKIE: Very particularly. But, aren't they in fact the kind of people that would be benefitted by this resolution? In fact, the people who own land that has already been defined, and a claim asserted thereto, and therefore they are not affected by this, have no concern whatsoever whether it passes or it doesn't pass?

MR. MOORE: That is correct.

ASSEMBLYMAN GORMLEY: All right, excuse me, I just don't like innuendo. It really nauseates me. I want to quote this, because I want everybody to hear this line that you put in here.

"It seems strange" --- that is innuendo --- "that the legislature is proposing to give 'squatters' rights' to public lands below mean high tide, but not to parks, highways, or other kinds of public lands." Well, I don't think anyone has paid individual property tax on parks, highways, or other kinds of public lands.

But, the next line really is a form of innuendo, which is another form of pollution, not environmental, but another form of pollution. "Perhaps it is because no casino-related interests are occupying highway lands." This has nothing to do with any particular group of people or an industry. This is a general concept of law, and even the Attorney General's Office has done that. That is a misleading remark, a remark designed to say it is for a particular group.

If anything, there is one group and one area that will be mapped, and that will be Absecon Island, and that will be done within the year and a half. So that makes this argument and that inference totally incorrect.

SENATOR RUSSO: Let's skip the nonsense. Is it your contention that there is some motivation on the part of one or more legislators that introduced this legislation to benefit casinos, and that is the basis for it?

MR. MOORE: I have no idea.

SENATOR RUSSO: Well, do you conceive it as a possibility?

MR. MOORE: It is a possibility for the reason I mentioned before, that the people who could possibly gain first and foremost are those people where definition has already occurred without mapping.

SENATOR PERSKIE: How can you justify that statement?

SENATOR RUSSO: Excuse me, Steve. You have a number of co-sponsors on this Assembly Resolution particularly who have no connection at all with the casinos or the district that they were in, or anything of that sort. You know, why would you come up with that suggestion?

MR. MOORE: Only for that reason, Senator, and I will repeat it again, that it would appear from my point of view - and from sitting on the Council as well as being involved in an environmental group - that those people who would benefit first and foremost without mapping--- Make the assumption that the mapping is not completed in the year and a half, or that no further mapping occurs. This amendment would benefit those first, where definition has occurred, and the place where definition has occurred before any other place is in the gore areas in Atlantic City. I mean, there it is very clear.

SENATOR PERSKIE: But---

SENATOR RUSSO: Excuse me, Mr. Chairman, I have the floor and I am going to hang on to it for awhile, whether you like it or not this time.

The only thing is, the mere fact that if there is no mapping done that someone would benefit; it seems strange that someone in your position would imply a motivation to legislators that that is why they did it. Of course, I particularly resent it because I may well support this--- I think riparian law ought to be straightened out once and for all. I don't represent any casino district. I don't even like to go there, as a matter of fact. The few times I have gone I came back with short pants. So, I don't have any sympathy for them at all.

There are a lot of Assembly people on this bill - I know Mrs. Gluck from my district and she doesn't represent anybody down there. People just think that the riparian law ought to be straightened out. Now, you know, there is always a possibility in any legislation that somebody is going to benefit one way or the

other. But, I think you are a little too glib in implying by innuendo, suggestion, or otherwise, that maybe that is the motivation for it. I hope you are wrong. I don't mean you can't be right. But, I just think you ought to have a little more of a basis than that before suggesting that any legislator would have that motivation in mind.

MR. MOORE: Well, Senator, I hope I am wrong, too.

SENATOR RUSSO: I agree with Assemblyman Gormley in that regard. Before putting a line like that in here, if you had some basis for it, I would like to know about it too, because I perhaps would take my colleagues to task as much as you would. But, without any basis for it, just saying maybe they will benefit. Of course, Senator Perskie is going to answer you now and say they are in fact the ones who won't benefit.

But, forget that. The fact that maybe they would benefit suggests from your position that there is maybe a motivation here to line the pockets of the casinos. I just don't think that is appropriate. I just point that out to you for future letters that maybe you ought to hold back on a sentence like that.

SENATOR RUSSO: Thank you, Senator.

SENATOR PERSKIE: I don't think that the comment or the testimony is worthy of another response on the same point. I think the testimony is clear that in the event that the Resolution would pass it would not have any impact at all on the State's claims for the reasons testified in Absecon.

Is there anybody else who cares to be heard with respect to the Assembly Concurrent Resolution 3037 and Senate Concurrent Resolution 3023?

SENATOR RUSSO: I move that you close the hearings.

SENATOR PERSKIE: The motion is in order and accepted. Thank you very much.

(HEARING CONCLUDED)

New Jersey Conservation Foundation

300 Mendham Road, Morristown, N. J. 07960

201-539-7540

Statement on SCR-3023 and ACR-3037 presented before the joint Senate Judiciary Committee and Assembly Judiciary, Law, Public Safety and Defense Committee on June 5, 1981 at Trenton, N.J.

Chairman Perskie:

My name is David F. Moore, and I am executive director of the New Jersey Conservation Foundation, a private, nonprofit, statewide membership organization concerned with open space acquisition and environmental quality throughout the state.

Our concern with this apparent giveaway of illegally filled public trust land is severalfold.

The State Supreme Court and Legislature have mandated the Tidelands Resource Council, of which I am chairman, to map the public trust lands. That process is well under way in accord with accepted mapping techniques.

The amendment as proposed would do nothing for most people who are occupying riparian lands, since they have to wait for completion of the mapping to determine whether the land they occupy was filled more than 40 years ago. It appears the major beneficiaries of this amendment are those who occupy lands in the so-called "gore" areas, where the state by previous surveys and grants has accurately dated such occupations of state land. Thus far, almost all of those gore areas are in Atlantic City.

It seems strange that the Legislature is proposing to give "squatters' rights" to public lands below mean high tide, but not to parks, highways or other kinds of public lands. Perhaps it's because no casino-related interests are occupying highway lands.

We do need to expedite the mapping process and make it as clear as we can. It has taken a long time to go through court proceedings in the hope that some mapping technique or techniques would be found acceptable. So far that hasn't happened, and the state is proceeding with the best available information as rapidly as possible, given both technical and financial limitations.

I, and I'm certain the other members of the Tidelands Resource Council, wish to settle claims and move to solve the problems of landowners with riparian title questions as soon as we can. But the method proposed is simply not protecting the interests of the people of the State of New Jersey; indeed, it does just the opposite. A very few individuals and corporations will benefit from the proposed amendment, and the people of the State of New Jersey will lose many millions--perhaps hundreds of millions--of dollars in the process.

The Council has been very much concerned, and remains so, about rewarding those who follow the law and not rewarding those who don't. The proposed amendment says to all of us: When someone trespassed forty or more years ago, and violated the law, that person or his successors should not only be excused from the violation, but given a bonus besides.

I certainly feel that the mapping process and claim process should be expedited. This legislation is clearly not in the public interest, and I urge you to consider other alternatives.

Thank you for the opportunity to present this statement to you.

TESTIMONY
OF
ROBERT F. FERGUSON, JR., EXECUTIVE VICE PRESIDENT
NEW JERSEY ASSOCIATION OF REALTORS
AT THE
PUBLIC HEARING
OF THE
JOINT SENATE AND ASSEMBLY JUDICIARY COMMITTEES
WITH RESPECT TO
ACR-3037 AND SCR-3023

"An amendment to the Constitution
requiring that lands shall have
been tidal flowed within the last
40 years to be deemed riparian
lands subject to State claims."

June 5, 1981

I AM ROBERT F. FERGUSON, JR. I AM THE EXECUTIVE VICE PRESIDENT OF THE 15,000 MEMBER NEW JERSEY ASSOCIATION OF REALTORS.

THE NEW JERSEY ASSOCIATION OF REALTORS, A TRADE ASSOCIATION, IS COMPRISED OF LICENSED REAL ESTATE BROKERS AND SALESPERSONS WHO PROVIDE A COMPLETE RANGE OF REAL ESTATE SERVICES TO THE RESIDENTS OF NEW JERSEY.

I APPEAR BEFORE YOU TODAY ON BEHALF OF THE NEW JERSEY ASSOCIATION OF REALTORS TO SUPPORT ASSEMBLY CONCURRENT RESOLUTION 3037 AND SENATE CONCURRENT RESOLUTION 3023 BOTH OF WHICH PROVIDE AMENDMENTS TO THE CONSTITUTION WHICH WILL RE-DEFINE RIPARIAN LANDS.

NJAR APPLAUDES THE SPONSORS OF THE TWO CONCURRENT RESOLUTIONS FOR PROVIDING THE LEADERSHIP NEEDED TO CLARIFY A CLOUD THAT HANGS OVER THE TITLE TO TENS OF THOUSANDS OF ACRES OF SO CALLED RIPARIAN LANDS IN 17 OF OUR 21 COUNTIES. CONTRARY TO POPULAR BELIEF, THE TITLE PROBLEMS CREATED BY "COURT DICTUM" IN 1960 ARE NOT CONFINED TO UNDEVELOPED MEADOWLANDS BUT ALSO INCLUDES OWNERSHIP OF THOUSANDS OF HOMES, COMMERCIAL BUSINESS AND INDUSTRIAL OPERATIONS.

TODAY IS NOT THE FIRST TIME SINCE 1960 THAT THE NEW JERSEY LEGISLATURE HAS ATTEMPTED TO COME TO GRIPS WITH THE ISSUE OF AN EQUITABLE SOLUTION TO THE PROBLEMS CREATED BY THE COURTS IN THEIR RE-DEFINITION OF RIPARIAN LANDS.

TWICE IN THE 1960's THE LEGISLATURE RECOGNIZED THAT TREMENDOUS PROBLEMS WOULD RESULT IF THERE WAS NOT A MODIFICATION OF THE COURT'S INTERPRETATION OF WHAT CONSTITUTED RIPARIAN LANDS.

THE RESULT WAS PASSAGE OF ASSEMBLY BILLS WHICH WERE VETOED BY THEN GOVERNOR RICHARD J. HUGHES AND A SENATE CONCURRENT RESOLUTION WHICH FELL VICTIM TO COURT ACTION INSTITUTED BY THE GOVERNOR.

DESPITE THE ASSURANCES OF THOSE WHO OPPOSED A RESPONSIBLE SOLUTION IN THE 1960'S, THE PROBLEM HAS NOT GONE AWAY BUT, IN FACT, HAS FESTERED WITH THE PASSAGE OF TIME.

THE NEW JERSEY ASSOCIATION OF REALTORS WAS ONE OF THE STATEWIDE GROUPS IN THE 60's WHICH JOINED A COALITION SPONSORED BY THE NEW JERSEY STATE CHAMBER OF COMMERCE. OUR OBJECTIVE WAS THEN, AS IT IS TODAY, TO WORK TOWARDS A RESPONSIBLE SOLUTION TO THE INEQUITIES WHICH RESULTED FROM THE COURT'S EXTENSION OF THE DEFINITION OF WHAT CONSTITUTED RIPARIAN LANDS.

I PERSONALLY REPRESENTED THE NEW JERSEY ASSOCIATION OF REALTORS ON THE AD HOC COMMITTEE AND WAS INVOLVED IN THE PASSAGE OF THE LEGISLATION CITED ABOVE. I FELT I KNEW THE PROBLEM THEN AND KNOW IT TODAY.

TO ILLUSTRATE THE SCOPE OF THE ISSUE, THE NEW JERSEY ASSOCIATION OF REALTORS SENT LETTERS TO THE MAYORS OF 188 MUNICIPALITIES IN 1964 ADVISING THEM OF THE DECISION OF THE APPELLATE COURT WHICH ENLARGED THE CONCEPT OF STATE OWNERSHIP OF RIPARIAN LAND. THE DECISION STATED THAT ANY LANDS WHICH MAY NOW BE, OR MAY HAVE EVER BEEN FLOWED BY MEAN HIGH TIDE (EVEN THOUGH MANUALLY FILLED) ARE PROPERTY OF THE STATE. THIS EXTENSION OF LONG ESTABLISHED RIPARIAN DOCTRINE WAS MADE OVER TWO DECADES AGO BY THE COURTS AND IS STILL HAUNTING PROPERTY OWNERS AND THREATENING THE TAX BASE IN MANY MUNICIPALITIES.

I ASK YOU FOR A MOMENT TO PLACE YOURSELF IN THE POSITION OF A PROPERTY OWNER WHO HAS PAID TAXES ON A PIECE OF PROPERTY FOR 20, 30 YEARS OR MORE ONLY TO BE TOLD WHEN HE GOES TO SELL HIS PROPERTY THAT HE CANNOT CONVEY CLEAR TITLE AND IN FACT MAY NOT OWN THE PROPERTY AT ALL BECAUSE AT ONE TIME IT MAY HAVE BEEN FLOWED BY MEAN HIGH TIDE.

TITLE COMPANIES TODAY, PARTICULARLY IN ATLANTIC AND CAPE MAY COUNTIES, ARE RELUCTANT TO INSURE TITLES BECAUSE OF THE COURT DECISION COMPOUNDED BY SOARING REAL ESTATE VALUES IN THE AREA RESULTING FROM THE CASINO INDUSTRY IN ATLANTIC CITY.

LENDERS WILL NOT COMMIT MORTGAGE LOANS IN THOSE INSTANCES WHERE TITLE INSURANCE CANNOT BE SECURED. (THEY MUST PROTECT THEIR INVESTMENT). THIS PLACES THE OWNER WHOSE PROPERTY IS "HIGH AND DRY" IN THE POSITION OF HAVING TO EITHER PAY FOR THE RIPARIAN GRANT OR SIT TIGHT UNTIL THE STATE FILES A CLAIM AND RESOLVES THE MATTER IN COURT.

AS PREVIOUSLY STATED, THE PROBLEM HAS BEEN WITH US SINCE THE EARLY 1960's. WHY THEN, THE CONCERN TODAY?

OBVIOUSLY THERE MUST BE A GROWING FEELING THAT THE STATE INTENDS TO EXERCISE ITS RIPARIAN CLAIMS WHENEVER AND WHEREVER THE OPPORTUNITY PRESENTS ITSELF.

IN 1969, GOVERNOR HUGHES IN A SPECIAL MEMORANDUM TO THE LEGISLATURE STRESSED THAT THE FULL SCOPE OF THE LAND AREA INVOLVED COULD EXCEED 250,000 ACRES OR 5% OF THE TOTAL LAND OF NEW JERSEY.

THE NEW JERSEY ASSOCIATION OF REALTORS FEELS THAT AS AN ALTERNATIVE TO HAVING PROPERTY OWNERS AND THE STATE IN COURT...OR REQUIRING INNOCENT PARTIES TO SPEND HUGE AMOUNTS OF MONIES TO BUY RIPARIAN GRANTS, A MORE REALISTIC SOLUTION CAN BE FOUND IN PASSAGE OF ACR 3037 AND SCR 3023 WHICH WILL ALLOW THE PUBLIC TO VOTE TO CHANGE THE CONSTITUTION.

ACTUALLY, IT WAS NEVER THE INTENT OF THE LEGISLATURE TO EXPAND THE RIPARIAN LAND DEFINITION TO WHERE IT STANDS TODAY. A JUDGE MADE THE CHANGE WHICH TODAY THE LEGISLATURE AND EVENTUALLY THE VOTERS OF NEW JERSEY MUST CORRECT.

THE ISSUE IS CRYSTAL CLEAR----IF YOUR PROPERTY HAS NOT BEEN TIDAL FLOWED AT ANY TIME DURING THE 40 YEARS PRIOR TO ENACTMENT OF THE CONSTITUTIONAL AMENDMENT, THE STATE CANNOT ASSERT A CLAIM PURSUANT TO APPLICABLE LAW UNLESS IT DOES SO WITHIN ONE YEAR OF THE ENACTMENT OF THE CONSTITUTIONAL CHANGE. ONLY PROPERTIES THAT MEET THE 40 YEAR TEST WILL BE INVOLVED. WHILE NJAR WOULD HAVE PREFERRED THAT THE STATE NOT BE GIVEN THE ONE YEAR GRACE PERIOD TO FILE A CLAIM, WE RELUCTANTLY SUPPORT THE AMENDMENT ONLY BECAUSE WE FEEL ACR 3037 AND SCR 3023 SHOULD BE PASSED.

WHILE THE DEFINITION IN THE BILLS IS NOT PERFECT, IT APPEARS THAT IT IS THE BEST WE CAN HOPE FOR AT THIS LATE DATE.

ONE OF THE PRIMARY REASONS WHY THE LEGISLATURE DID NOT TAKE POSITIVE ACTION TO RESOLVE THE ISSUE IN THE 1960's WAS THE FACT THAT THERE WAS A QUESTION AS TO THE IMPACT THE LEGISLATION WOULD HAVE ON THE ENVIRONMENT. THERE WERE THOSE WHO WERE CONCERNED WITH THE PRESERVATION OF SOME OF NEW JERSEY'S MOST VALUABLE NATURAL AREAS SUCH AS ESTUARIES AND MARSH LANDS. THIS IS NOT AN ISSUE TODAY. THE LEGISLATURE OVER THE PAST DECADE HAS TAKEN STEPS TO INSURE THAT THOSE CONCERNS WERE REMOVED. I REFER TO THE PASSAGE OF THE WETLANDS ACT AND THE COASTAL AREAS FACILITY REVIEW ACT.

TO NJAR THE ISSUE IS NOW CLEAR. ENABLING POSITIVE ACTION WITHOUT THE FEARS OF TWO DECADES AGO.

THEREFORE, IN CONCLUSION, NJAR URGES A BILL BE REPORTED FAVORABLE FROM THIS HEARING AND THAT PASSAGE BE GIVEN LEGISLATIVE PRIORITY.

LET US NOT HAVE ANOTHER 20 YEARS OF UNCERTAINTY AS TO WHAT CONSTITUTES RIPARIAN LANDS. RESOLVE THE MATTER IN 1981.





