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PUBLIC HEARING

before

SUBCOMMITTEE OF THE ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE

on

ACR-3037 and SCR-3023

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

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NOV 24 1981

Held:
July 23, 1981
City Hall
Linwood, New Jersey

MEMBER OF SUBCOMMITTEE PRESENT:

Assemblyman Michael J. Matthews (Chairman)

ALSO:

Assemblyman William L. Gormley

Norman Miller, Research Associate
Office of Legislative Services
Aide, Assembly Agriculture and Environment Committee

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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):
3 1. The following proposed amendment to the Constitution of the
4 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 *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.	<p>RIPARIAN LANDS</p> <p>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?</p>
	No.	

CORRECTED COPY
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SENATE CONCURRENT RESOLUTION No. 3023

STATE OF NEW JERSEY

INTRODUCED MAY 4, 1981

By Senators PERSKIE and J. RUSSO

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 defined and asserted by law within that period?
	No.	

ASSEMBLYMAN MICHAEL J. MATTHEWS (Chairman): Good morning. I am Assemblyman Matthews. On my right is Assemblyman William Gormley. On my left is Norman Miller, who is Aide to the Assembly Agriculture and Environment Committee.

We are having a hearing on riparian rights. I guess the question is why. Three years ago, Edward LaDrew from the City of Linwood came to me with a problem. He couldn't sell his property because of the question of riparian rights. He still had to pay taxes on the land, yet he could not sell it because he couldn't get clear title. I looked into the matter. I went to the Governor's Office. I went to the Attorney General's Office and to the Department of Environmental Protection. I was told it would take some time, but it was being worked on.

We have some problems in Atlantic City and Atlantic County, both of which are affected. We have 56 acres in Atlantic City - there are about 80 net acres - of publicly-owned land that are not on the tax rolls at this point in time. In addition to affecting Atlantic City, it also affects the ratables for Atlantic County and the county tax rate.

According to officials at Resorts, International - and there was an article in today's press on this story - they were told it would be resolved in August of 1982. I understand in the City of Ventnor, they have approximately 20 acres of land that cannot be developed because of the same problem. We have not had an answer on this.

I will give a little bit of history on riparian rights. Based on English Common Law, any land under water belonged to the king. After the Revolutionary War, it was then declared that land belonged to the states. In 1947, with the revision of the State Constitution, enabling State statutes reaffirmed this. Then there was the O'Neill Case in 1968. In that case, because of the increased land in the Hackensack Meadowlands, the court upheld the State, but said at the same time, "You have to find out what land is yours and do the mapping."

In May of 1980, there was the Newark City Case, in which the method of mapping that the State had done was found acceptable by the courts.

So, we are here today to try and answer these questions - anyway, they are my questions: Are the maps for Atlantic City and Atlantic County completed? Why hasn't DEP or the Attorney General released the maps? Why did the Attorney General tell Resorts, International, that the riparian rights question on the 56-acre urban renewal tract would not be settled until 1982? Why hasn't the State tried to help the people settle this problem?

The first two witnesses we have are going to appear jointly. They are Donald Graham, Assistant Commissioner of DEP; and Judith Yaskin, First Assistant Attorney General. Hopefully, they will answer my questions.

My first question will be directed to DEP. There are a couple of matters which Mr. Yunghans talked about. There was some mapping done and turned over to the Tidelands Resource Council on September 5, 1980. Were the maps delivered then?

D O N A L D T. G R A H A M: For the purpose of clarity, it might be well if I made a statement based on the mapping program at this time and the status of the mapping program as it concerns the entire State of New Jersey, the progress that the mapping program is making, and possibly you would want to hear from Miss Yaskin as well on the legal implications of that mapping program as it concerns, again, the entire State of New Jersey. I will answer your questions. But I think if I made a statement and gave you the status of the mapping program at

this time, it might clear up some of the questions you have, including the one you asked.

ASSEMBLYMAN MATTHEWS: Just answer the question: Were they turned over September 5th, 1980?

MR. GRAHAM: The work performed by the Office of Environmental Analysis is a mapping program that has been submitted to the Tidelands Resource Council. It is a preliminary work product. If that is what is being referred to - and I have not read the article - yes, approximately 395 maps have been submitted throughout the entire State by the Office of Environmental Analysis. That is a preliminary work product. Before such time as those maps are accepted and adopted by the Tidelands Resource Council, you must understand we have to look at them, the Department of Environmental Protection has to look at them, and the Office of the Attorney General has to look at them to see if, in fact, the work that has been done is all-inclusive and that those claim lines that are established on that work product should be the final work product.

ASSEMBLYMAN GORMLEY: Commissioner Graham, ---

MR. GRAHAM: If I can finish, Mr. Assemblyman, I think I will answer your question.

At this point in time, we are involved in that further exploration statewide, not only in Atlantic City, but we are looking with our staff in the Department of Environmental Protection not only in the Office of Environmental Analysis but in the Division of Coastal Resources, which is, by the way, the operating administering agency for the Tidelands Resource Council. So, basically, that is the answer to your question. A work product has been submitted. That work product is a preliminary work product. It has not been adopted by the Tidelands Resource Council as yet. Upon the completion of the further work we are doing on them, we fully expect within a short period of time that those maps that have been done and those maps that will be done throughout the entire State, be they on the coastal area or the tidal Delaware area, will be submitted to the Tidelands Resource Council in their final form.

ASSEMBLYMAN MATTHEWS: What is the difference between the mapping adopted in the Jersey City case in 1980 ---

MR. GRAHAM: Do you mean Newark or Jersey City?

ASSEMBLYMAN MATTHEWS: I'm sorry. Newark. What is the difference between the maps that were turned over in September and the maps that they said were okay?

J U D I T H A. Y A S K I N: The maps that you have described as being okay, what the court said was that a methodology established examining the flora and fauna of a particular area that might indicate that at previous times the land was flowed by tidal water was an acceptable methodology for establishing a claim line for the State of New Jersey.

The court specifically said - and, in fact, in one case, the Boroughs Case, denied that methodology as opposed to another set of proofs with regard to a claim line against the State and said it is only one methodology. The court indicated that there are several methodologies that are approved and will be examined by the court - there are several types and quantities of proof. The particular scientific methodology that is being used in the Hackensack Meadowlands was developed because of and for the marshland, salt-marsh problem, and it was very scientifically accurate for that area. It is not as accurate and more work needs to be done for beachfronts, simply because the grasses don't grow on the beach and never have.

Historical data, conveyance overlays, and other methodologies are being

employed with regard to beachfront properties. It is within the rules of scientific presentation. It is the same rules under which the Tidelands Resource Council has reviewed and adopted maps before. There are different questions that are not answered by the same scientific photographic approach that were answered in the Meadowlands. They cannot be answered by that methodology simply because sand doesn't grow the kind of flora that we are talking about. So it is beachfront property that has raised the specific problem. But the scientific methodology is still utilized with the exception of the utilization of this photography that really is not applicable to beaches simply because the grass never grew there.

ASSEMBLYMAN MATTHEWS: You have to bear with me. I am not too bright. Since the Attorney General's Office was involved, why weren't some of these things discussed a long time ago, working hand in hand with DEP?

MR. GRAHAM: They were.

ASSEMBLYMAN MATTHEWS: If they have, as you say, preliminary mapping, why turn over preliminary mapping to ---- It just seems there is no coordination here.

MR. GRAHAM: It is a good question. There is very good coordination. That is exactly why the maps haven't been adopted by the Tidelands Resource Council because the Tidelands Resource Council had certain questions. The staff of the Attorney General's Office had certain questions. When we got together and we talked, as we do constantly together, on this matter, certainly, and other matters - I didn't mean to say we don't - we discovered and said to ourselves, "Maybe there is historical data that has not been looked at and that we should go one step further and explore the open beach." We have historical documents in our keeping in Trenton in the Division of Coastal Resources that led us to believe we should explore further the possibility that a more extensive or a less extensive claim line would be applied to those maps. That is the process we are in now. There has been constant communication and that is the reason why the maps are there.

MS. YASKIN: Assemblyman, I think that Mr. Graham and I both indicated to you in our last meeting that we have to speed this up.

It means an expenditure of State tax dollars to do that, to purchase the experts and the resources we need. I think we who have the responsibility for making those kinds of administrative decisions have agreed together it is time to do that. We have tried to develop a program - and I think Don can best speak to the mapping program - whereby rather than taking things out of order we have taken each section of the State. As of right now, I believe the last estimate I had was a year from now we expect to be about 50 percent completed throughout the State.

MR. GRAHAM: We are 34 percent complete now statewide. That is on schedule.

I want to make something very clear. I could give the economic resources, staff resources, to the Office of Environmental Analysis - quadruple it - and we still could not physically produce the maps any faster. The reason you can't is that the mapping process is very, very expensive, it is very finite, you have to do a lot of field work - the tides, the winds, the heavy rains. The methodology approved by the Supreme Court is the methodology that is being utilized here in the mapping process. That has to take a long time, unfortunately. But we did in January of 1979 commit the financial resources to accelerate the contracts we have with the people that do the mapping for us as well as our own staff - in fact, we almost doubled our own staff in that office in order to do it - and we are putting a much greater emphasis on doing it. Thirty-four percent of the State has been mapped. Approximately 16 percent more will be mapped in one year. We will be

up to close to 50 percent of mapping for the entire State at that point in time.

As far as the further exploration of additional historical data that might be available to be put together with the mapping process, certainly within that time frame, it will be completed. I don't speak for myself.

ASSEMBLYMAN MATTHEWS: How many years has it been? In 1968, we were talking about this kind of mapping. You are saying 34 percent ---

MS. YASKIN: Can I clarify that? 1968 was not when we started talking about that. O'Neill said, with regard to the Meadowlands --- and the Legislature finally in 1971 passed a bill - only with regard to the Meadowlands - said to the State: I will give the resources and the authority to the Department of Environmental Protection to map the Meadowlands. The State then and Environmental Protection looked at the entire State problem and said, just as Atlantic City became somewhat of a focus for the problem we are now discussing, i.e., where are we on riparian lands, because of the impetus of development in Atlantic City, the same thing happened in the early '70's. The Hackensack Meadowlands was being looked at as a major development in the State of New Jersey. It has worked out to be, by the way, despite the riparian problems, one of the most successful developments and an ongoing, profitable, income-making ratable for all the counties involved. Nonetheless, in the early '70's, Hackensack was the focus just as Atlantic City is now because of its rapid development and because of the rapidly increasing value per acre.

A bill similar to the one that is before you now for a constitutional amendment was passed by the Legislature. It was vetoed by Governor Hughes at that time. It was indicated that it was a land give-away and that the State would resolve the Hackensack problem by mapping the Meadowlands. The only direction the Legislature gave to DEP was to map the Meadowlands. That they did. All of those maps have been accepted by the Tidelands Resource Council. What the State did in addition to that, without the legislative mandate, was to say, in fairness to the rest of the State, what any citizen should be able to do is come to the Tidelands Resource Council or the Division of Coastal Resources and see whether their land is riparian, number one, or might be riparian, because remember these are only claims lines. And anybody has a right even despite the claims line to contest the riparian nature of the property. First, they should be able to find out whether their land might be riparian; secondly, through their title companies and through the records of the State, they should be able to find out whether or not that riparian land has already been granted, which in many cases it had been, so that there is no present problem for the landowner; and the citizens should be able to get the answers that they need. That is when Mr. Graham's department undertook a much broader scope of responsibility than the Legislature or the courts envisioned. Rather than Hackensack, we said, "Do the whole state."

It is that process which Don is speaking to you about. It is 34 percent of the State rather than just the small Hackensack Meadowlands, which they had focussed on and completed. By the way, keep in mind, in some instances when Don has administrative decisions to make about the millions of dollars necessary to do the mapping, up until the spring of 1980, we didn't even know whether the courts were going to accept the methodology that we were going forward on, that we were spending tax dollars on. We hired people. We had done research. We thought scientifically it was a good and proper methodology. But the real concern was that the courts of the State of New Jersey had to adopt that. Until that was adopted in the spring of 1980, it was a little difficult to go full tilt, not knowing whether or not the methodology would be approved, although Don and the Commissioner of the department made that decision to go forward and map the State, regardless of the outcome of

the court case, with the hope that they were doing the proper thing, with the guidance of the Attorney General's Office. It worked out well.

MR. GRAHAM: I am sure, as you well know, the litigation on the methodology was quite extensive and took a lot of years in order to ---

MS. YASKIN: Ten years.

MR. GRAHAM: (Continuing) --- in order to clear it up. So it was somewhat foolhardy at that point in time before we knew if the methodology was, in fact, a firm one, that we go forward and commit the tremendous resources we had to do, to that program. But once the City of Newark Case was resolved and once the methodology was firmed, we then began on the rest of the State of New Jersey. As Miss Yaskin said before, on the open beach question, we then saw very possibly we would have to seek additional data. We don't know, in the end, if that is going to be necessary, if the additional historical data are going to be substantial enough that we will have to include it with the mapping process. But we certainly think, in the public interest of the people of the State of New Jersey, we had to go forward and do that and that is what we are doing at the present time.

ASSEMBLYMAN GORMLEY: I have one point which relates to a date she gave. It was an incorrect date. You indicated that there was not a mandate to map until 1971 by the State of New Jersey; is that correct?

MS. YASKIN: I said I was not sure of the date. I said the Legislature passed a bill I believe in the early '70's. I thought '71. If it is '72 or '73 ---

ASSEMBLYMAN GORMLEY: It was '69.

MS. YASKIN: No. That was the court case.

ASSEMBLYMAN GORMLEY: January 13th, 1969, New Jersey Statute 13:1B-13.

MS. YASKIN: That is authorizing the Hackensack Meadowlands.

ASSEMBLYMAN GORMLEY: That was those lands in the entire State of New Jersey.

MR. GRAHAM: What is the point?

ASSEMBLYMAN GORMLEY: The point is that in 1969 there was such a mandate by the State Legislature to the Tidelands Resource Council to do that throughout the State.

ASSEMBLYMAN MATTHEWS: I think that was Chapter 404 of Laws of 1969. What does that say, just to clear up that point?

MS. YASKIN: You would agree, Assemblyman, it was not until the spring of 1980 that the Supreme Court validated the methodology in the Newark Case.

ASSEMBLYMAN GORMLEY: I will agree to that after I ask you about 200 questions.

ASSEMBLYMAN MATTHEWS: There are about 220 maps that were turned over to the Tidelands Resource Council. What does that constitute? I mean, how much of the State do the 220 maps cover?

MR. GRAHAM: Thirty-four percent of the State's lands that are subject to investigation. Do you understand that? The State of New Jersey has 8,204 square miles in it, 30 percent of which is subject to investigation, which is 2,445 square miles. That is the area that we are investigating. Thirty-four percent of that has been completed to date.

ASSEMBLYMAN MATTHEWS: When is that going to be officially completed?

MR. GRAHAM: To go back to what I said before, we do two hundred plus maps a year, two hundred to two hundred and ten maps per year. That is all that can physically be done. The target now, using that time frame and using that workload, it would probably be the end of 1985 when we would get to the entire State of New Jersey to be mapped. We are taking it in sequence order.

ASSEMBLYMAN MATTHEWS: I am asking this question: When is the 34 percent going to be done?

MR. GRAHAM: Maps covering 34 percent of the land mass are now before the Tidelands Resource Council. As I said twice before - and I will repeat it again - we hope in the next several months to complete our investigation of the other historical data that we feel may be pertinent to the mapping process and make a decision which way we go at that point in time.

ASSEMBLYMAN MATTHEWS: Who is going to make that decision?

MR. GRAHAM: The Department of Environmental Protection and the Attorney General of the State of New Jersey will make recommendations to the Tidelands Resource Council on the competency of the maps placed before them.

MS. YASKIN: They are the bodies charged by you, the Legislature, with the responsibility for making those decisions.

ASSEMBLYMAN MATTHEWS: Don't you feel that this has taken an unreasonable amount of time for the people who have this land? I know in the campaign against the constitutional amendment with regard to riparian rights, they talk about the give-away. I think the budget this year is \$620 thousand. That is what you requested to do this mapping, which is going to be paid for by these lands. But at the same time ---

MR. GRAHAM: No. Go ahead. I'm sorry.

ASSEMBLYMAN MATTHEWS: That is what it said in the budget. It is supposed to be paid for by the funds you received for this.

MR. GRAHAM: I'm sorry. I thought you meant lands that will be mapped.

ASSEMBLYMAN MATTHEWS: Don't you think it is unreasonable for these people to have all this anxiety and see the land escalating in value as they hold onto it? Isn't there some kind of methodology to push this along? I know there are 200 some maps which they talk about working on 6 or 7 years. Even though they weren't sure they would be acceptable until 1980, apparently some work had been done. Just looking at the progression thus far, I don't even think 1985 seems realistic at this point in time.

MR. GRAHAM: Assemblyman, the mapping process - and I will repeat it again - began in January of 1979 after we determined that we were going to go ahead and use the same methodology. We have not been mapping these lands since 1971. Between '71 and '79, we were involved in the Hackensack Meadowlands. In 1979, the department ordered an accelerated work program take place in mapping the balance of the State of New Jersey's area of investigation. So let's not cloud things here by saying we have been doing it for 6 or 8 years. We have not been doing it for 6 or 8 years. To go back to what I said before, physically, it is an impossibility even if I quadrupled my staff. It would be a physical impossibility given a legal mandate to do it any faster. If there is a way it could be done, we would love to know it.

ASSEMBLYMAN MATTHEWS: Younghans said you have been working on it for 10 years.

MR. GRAHAM: I am not privy to the articles you have been reading in the newspapers. I will tell you that we have been mapping tidelands for 10 years - you are absolutely right and I will repeat it a fifth time - in the Hackensack Meadowlands. Since that time, we have been in litigation in the Hackensack Meadowlands. We did not start mapping tidelands in the balance of the State of New Jersey prior to 1979. I don't know how to say it any clearer.

MS. YASKIN: Assemblyman, may I just comment on one issue? You raised the question: Don't you and the Attorney General feel we should speed this up in fairness to the citizens out there who are anxious about their properties? Yes, we do feel there is no requirement - that the court says the State has no requirement to do this

mapping. But the Legislature has said we should do this in Hackensack. We read the statute differently, but Assemblyman Gormley would say this applies to the rest of the State. Regardless of the interpretation of that language, it is clear that the Department of Environmental Protection has agreed with you, that every citizen should have the right to walk into their offices and be able to say, "Oh, my land is clear," or "There is a problem with my land." Let me say to you that there is not one person who can come here and testify before you this morning that they were confronted by the spectre that Assemblyman Gormley at one point raised in the last hearing I attended and that they were kicked off their land or that the homeowner was destroyed and his property was confiscated. Not one citizen of this State has ever been treated in such a malicious manner by this government.

The lands that "the State holds" are public lands. Don Graham doesn't hold them for Don Graham. And Judy Yaskin isn't preserving them for Judy Yaskin. They are held for the public school fund. It is dedicated by the Constitution to support our schools throughout the State. If the Tidelands Resource Council determines to sell a piece of land or to allow the alienation of land, those funds come back into a fund, not for the support of government, not for salaries, but in a fund for the support of every school in the State. They are the surety for all school bonds throughout the State. It is the reason our school bonds are getting triple-A ratings and double-A ratings.

ASSEMBLYMAN GORMLEY: Mr. Chairman, isn't this on mapping?

MS. YASKIN: It is on mapping.

ASSEMBLYMAN GORMLEY: Well, that is not on mapping. That is on the School Fund. This is on mapping and the procedures on mapping. We went through this at the last hearing.

MS. YASKIN: I know, Assemblyman, ---

ASSEMBLYMAN GORMLEY: If you want to start, then I will start on something that is totally unrelated to the hearing. This is on mapping.

MR. GRAHAM: Assemblyman, with all due respect, we would loved to have known what the hearing was about. The first agenda we got was when the reporter just handed me a copy of it. If you want to talk about the mapping specifically --- I asked the other day in a conference call with both of you that I be given the parameters of this hearing. I was not given that by staff or by either one of you, except verbally in very general terms. So, if you don't want us to stray, we will keep it to whatever you want. We thought we were here today to talk about the entire mapping program.

ASSEMBLYMAN GORMLEY: And I will complete the conversation. I said we weren't going to supply interrogatories as to what we were going to ask, but we wanted to talk about mapping.

MR. GRAHAM: I simply asked for the courtesy of an agenda when the two of you were on the conference call with me. I thought it was a courtesy to my office and Miss Yaskin's office that we at least be given an agenda of what we were being asked to come here and testify to. You in the hall outside stated to me that you didn't get an agenda until this morning either. I apologize if I am not totally prepared as to what I am supposed to testify to. I am competent, I think, to testify across the board. All I asked for was the courtesy of an agenda. We did not receive that.

ASSEMBLYMAN MATTHEWS: The main purpose of this meeting is to talk about the mapping. That is the general nature of the whole meeting.

MS. YASKIN: I am sorry, Assemblyman, if you felt I strayed. I know the greater public issue that you are concerned with is the constitutional amendment

and the effect on riparian lands. I was trying to put your questions in that frame work.

ASSEMBLYMAN MATTHEWS: You talk about land and the school bond issue and all those kinds of things. But at the rate land value and interest is escalating today, it is going to end up where the State could have a land bank that they can't unload. Once again, you are going to take this land off the property tax rolls. So I think you had better have an economist in on your meetings. If you look at the market today, people are unloading land because the taxes are too high, the interest rates are too high and the State is going to have land like we have in Atlantic City, with 56 acres which we can't tax and which is a burden on the entire county. It may sound great to say, "We're going to give this money to the schools, folks. We can't hurt those little school children." But at the same time, you are spending \$620 thousand this year - I don't know how much you spent in previous years - and you are taking that money away from the school children too for the same issue.

MS. YASKIN: No, I am not, sir. I would disagree with that analysis.

ASSEMBLYMAN MATTHEWS: Well, that money isn't like manna from heaven. That money has to come from the taxpayers some way.

MS. YASKIN: No, sir, it is coming from the sale of the property from people who desire the riparian lands. As far as "unsalability" or perhaps stockpiling land ---

ASSEMBLYMAN MATTHEWS: It is coming from the sale of lands.

MS. YASKIN: They are the people's lands.

ASSEMBLYMAN MATTHEWS: I thought that money went to the schools.

MS. YASKIN: That's right. It goes to the School Fund.

ASSEMBLYMAN MATTHEWS: So it can't go to both, can it? It is a matter of semantics. The people pay for it. The proceeds ---

MS. YASKIN: But, Assemblyman, you want the people to be able to know where potential claims exist. The only way we can do that is to provide the mapping. We pay for that out of the sale of land that people want. So it is the cheapest and the quickest and the best way to provide for what you want.

ASSEMBLYMAN MATTHEWS: So it is coming out of those poor children's mouths.

MS. YASKIN: No, no. It is a balance.

ASSEMBLYMAN MATTHEWS: Somebody has to pay the expense of the whole operation. The money has to come from some place. So, the proceeds received from the people buying the property either go to you or they go to the schools. They can't go to both.

MS. YASKIN: They go to both. A tiny percentage of the money is used to administer the mapping program.

ASSEMBLYMAN GORMLEY: On the mapping procedure, I think we ought to get into a total definition of mapping. The mapping process is similar to the mapping process that was used to map the wetlands of New Jersey. Am I correct in that?

MR. GRAHAM: It was similar.

ASSEMBLYMAN GORMLEY: Therefore, for the 9-year period that you were involved in the litigation in Newark - and that is a matter of record - to validate this process, you also knew that even if it were validated that areas that did not have grass, such as beaches, would have to be backed up on this. Is that correct?

MR. GRAHAM: That's correct.

ASSEMBLYMAN GORMLEY: Therefore, no matter what you were going to do with

mapping, the backup could have been prepared over the 8- or 9-year period. Whether the infra-red process were right or wrong, you would have had to look to the other information and compile that over the 8- or 9-year period.

MR. GRAHAM: We can go back and employ the technique of "would have, could have, should have," what could have been done 10 years ago when I wasn't there and Miss Yaskin wasn't there.

ASSEMBLYMAN GORMLEY: You are back to the Republicans.

MR. GRAHAM: You said it. But I can tell you that we had a lot of data available to us, yes. But again I will go back to the statement we both made before. We felt in the best interest of everyone that until the methodology was down the road to a point where we were confident it would be the legally adopted methodology, we didn't start until 1979. I don't know what more I can say.

ASSEMBLYMAN GORMLEY: What I am saying is that you are bringing the point up now that that methodology has been validated as ---

MS. YASKIN: --- as a method.

ASSEMBLYMAN GORMLEY: (Continuing) --- as a method, and you are not excluded from using any other.

MS. YASKIN: That's correct. Nor is any other applicant.

ASSEMBLYMAN GORMLEY: Or using any defense to any of the proofs you come up with. We have a situation where you are stating - and correct me if I am wrong - in obvious terms, at least it appears to be obvious to me, that we can't obviously use this procedure on certain beachfront property because the grass is not there.

MS. YASKIN: And never was.

ASSEMBLYMAN GORMLEY: What I am saying is: on those areas that are beachfront, this procedure doesn't apply; and since 1973, knowing that this procedure could never apply where there has never been grass, it would seem that an alternative procedure or whatever validation procedure you would want to come up with would have been done. In Newark - I know it is retrospect --- but we are now saying we have one process and we have to go back and do the other. That could have been done because it never would apply to beachfront property.

MS. YASKIN: To go back is not quite right. One of the wonders of the photography is that it gives you an answer, looking at present sites and saying what the past sites were. The methodology of mapping we are talking about is certainly known by Mr. Yunghans, is recognized by Mr. Yunghans, is recognized in his rules and has been. The problem with historical data in conveyance overlay is that that takes research on individual properties. It is title research. It is historical data, such as construction, such as local municipal indications of fill, grants for jetties. It is a much more difficult process because it is much more time consuming. It takes the individual thought of individual researchers to examine areas of property and what happened to those areas of property in historical concept. So, it is not only a question that we didn't recognize it; we have recognized it. What we have started to do is work on areas and Absecon Island is the one area which we will complete in the near future - in the very near future.

We have worked on areas and asked what happened historically: storms, jetties, fill, construction. The issue for beaches is how the beach was formed - by natural imperceptible accretion or by artificial methods. Artificially accreting land to the beach does not inure to the benefit of the landowner. If I put up bulkheads, if I put up jetties, I cannot extend the value of my property or the amount of land I own on the beach no matter how many thousands of feet accrete as a result of my action. I don't gain the benefit of that. That is a known fact. Developers have known that. Title companies have known that. This

is no new ballgame, Assemblyman. It is the same rules we have worked under for a hundred years and managed to develop almost all of our shore communities, managed to put property on the tax rolls, managed to market property, sell property and develop property. Nothing new is changed under the sun.

ASSEMBLYMAN GORMLEY: All right. Let's get into that a little bit. Let's assume you have the maps for 34 percent of the State. Are they the final maps? In other words, you have maps prepared through Mr. Yunghans' office. They are preliminary work products.

MR. GRAHAM: Some of them are adopted.

ASSEMBLYMAN GORMLEY: But for purposes of what was approved in the court case, as to the scientific process that was approved in the court case, he has done all he can do - as to the scientific process.

MS. YASKIN: He can't take any more photographs.

ASSEMBLYMAN GORMLEY: The photos are done. Fine. You could very well then, if those are done, release those to the public and say, "Excepting where grants have been given, this is where the State would have a ---"

MR. GRAHAM: No, that is not the case. That is not what we are talking about. Somebody is not listening. What we are talking about is - we are not only talking about where the grants have been given - we are talking about the claims lines that have been established on that preliminary work product. In the open beach area along the coastline of the State of New Jersey and the east coast and along the Delaware, it is a different program. We are looking at historical data that may be available, as Miss Yaskin said before: how the beach got there, did the beach accrete due to natural causes over a period of time or did it accrete because a jetty was built, because a hotel was built or because a private residence was built. That is what we are looking at now. We are taking an extra look to see if the claims lines drawn on that preliminary work product, in fact, represent to a substantial degree the natural makeup of the land.

MS. YASKIN: Can I just comment on one other principle, Assemblyman?

ASSEMBLYMAN GORMLEY: Yes.

MS. YASKIN: There is one other complicating factor. I wish it were easier to explain. It is a very sophisticated area. There is something called evulsive changes - all fifty states recognize evulsive changes - which says not only should the land accrete naturally and imperceptibly, but if there are evulsive changes - that is, a storm comes in and throws a thousand feet of sand up on the shore - that one thousand feet remains riparian. Likewise if a thousand feet are taken, the landowner loses that. That complicates the problem of accretion. One of the things we are hiring Dr. Fitzgerald for --- and I think I have had the pleasure of testifying before and I mentioned Dr. Fitzgerald who is a geomorphologist - I think that is the title he has - on tidal ebb-flow, channel movements. I am not an expert in that area - heaven forbid. But that evulsive change is also the study that Mr. Fitzgerald is being hired for right now and, hopefully, should be completed in November. That will give us the storm pattern, probably the last key that we need to fit in with regard to Absecon Island.

MR. GRAHAM: --- to make a decision.

ASSEMBLYMAN GORMLEY: Assume you were to file a claim and eventually get to the point where you could file suit, or whatever. The reason for the City of Newark case or the delay in the City of Newark case was so that you would have something that would stand up in court. That was the whole basis. You delayed it because you have to have a procedure that you know will stand the test of time or stand the test of the justices or those at whatever level it might go to. They will probably see it a few more times again if something is filed. I assume that to be

correct. We have a situation where we are talking about other processes and other data and other procedures. Doesn't it really come down to the fact that these other procedures --- Have they been approved by the court?

MS. YASKIN: Yes.

ASSEMBLYMAN GORMLEY: They have been approved by the court.

MS. YASKIN: Yes, they have always been recognized. Throughout our Lippincott --- I don't have a series of cases in front of me.

ASSEMBLYMAN GORMLEY: I understand the principle of accretion and everything that you have mentioned.

MS. YASKIN: O'Neill, North Wildwood - all those.

ASSEMBLYMAN GORMLEY: But we are talking about either the sudden creation of a beach or the gradual creation of a beach.

MS. YASKIN: The North Wildwood case specifically deals with that problem.

ASSEMBLYMAN GORMLEY: We are talking about the scientific data used to develop those claims; is that correct?

MS. YASKIN: Yes. For the tidal impact, obviously you turn to experts. I don't know whether a geomorphologist testified in the North Wildwood case. I did not participate in it. I could check the record for you. But I know that there was evidence with regard to slow and imperceptible accretion versus the impact of the creation of certain goring jetties in the area versus artificial fill. All of those issues were examined in that case. I don't know whether specifically an expert geomorphologist testified.

ASSEMBLYMAN GORMLEY: What we are talking about is establishing that scientific base or the competency of that procedure, whatever procedure it might be, beyond the procedure that evolved in the Newark case.

MS. YASKIN: No, this is not a methodology in the sense of the photography which was an untested scientific field. This is a recognized scientific field. You might lose a case just as you lost the case on the photography in one instance where there were better proofs against you that proved differently than what the photography showed. But this is a field of expertise that would be recognized.

ASSEMBLYMAN GORMLEY: How long has that field of expertise been recognized?

MS. YASKIN: I don't know.

MR. GRAHAM: Historical data?

ASSEMBLYMAN GORMLEY: How long ago? Was that pre-1979?

MR. GRAHAM: Certainly.

ASSEMBLYMAN GORMLEY: Therefore, I will get back to my original point. The best form of evidence for the beachfront properties had been established long before 1979.

MR. GRAHAM: And, in fact, the riparian grants that have been conveyed have utilized that methodology. What we are saying now in those grants that have been utilized, we now have the maps and we are now putting that extra piece together with those maps. If you are asking me again, why didn't we do it prior to 1970, I have no excuse for that.

ASSEMBLYMAN GORMLEY: My point is: the methodology in the Newark case was not the cause, whether it be another administration or whatever the reason might be --- is not a valid reason as to why the other methodologies could not have been used in areas where this process approved in the Newark case couldn't be used.

MS. YASKIN: I think the focus again was Hackensack. You were developing and trying to get recognition by the court of this methodology and you weren't doing

the rest of the State. So, if you are asking me, why weren't you doing that, it was simply with the expenditure in the court and the approach on Hackensack and the marshland-saltland, flora and fauna expense, sophistication and problem, you just weren't doing the rest of the State.

ASSEMBLYMAN GORMLEY: You have said 34 percent is done. I want to do some backtracking. I assume - this is an assumption and correct me if I am wrong. The Governor's counsel came out with a statement a few weeks ago when we were in debate on the amendment that \$150 million would be lost to the State of New Jersey - \$150 million in grants. I, obviously, give a lot of credibility to the Governor's counsel. If he knows the figure of \$150 million, obviously through simple logic, he knows what ground and what properties are affected. In opposition to the constitutional amendment, he said this will cost \$150 million to the State of New Jersey. My question to you is: Was that figure of \$150 million provided by either of your offices; and, if it was, what was the basis for the \$150 million figure and what ground are we talking about? In other words, that is the kind of conclusion you give when you know what ground it is and the mapping has been done or you don't say it, especially a person in that office.

MS. YASKIN: Mr. Yunghans has done a report. As I told you, one of the problems I have with the constitutional amendment, that I could understand a homeowner's exemption if we were really worried about little people being squeezed, although it never happened, but what I couldn't understand is why an additional, costly methodology as when the land was flowed and when it ceased to be flowed and why one year when you knew it couldn't be done in one year. But we won't go back to the constitutional amendment.

ASSEMBLYMAN GORMLEY: You endorse the homeowner's exemption?

MS. YASKIN: No. I said when we discussed it, Mr. Gormley, that I could understand. You expressed to me at one point a concern about homeowners. In a discussion, I believe, in the hallway of the Legislature, I talked and I believe it was with you - it could have been Senator Perskie - I'm sorry, I could be wrong - the fact that there was the Weintraub Case which dealt with a homeowner exception that was recognized by the Supreme Court in a previous setting of whether or not title should be taken from homeowners, as opposed to the present constitutional amendment which you know I oppose.

ASSEMBLYMAN GORMLEY: I know that.

MS. YASKIN: Let me get to your question. You asked how that figure was provided. I told you that I couldn't tell. I think I said untold millions, which sounded even more dramatic than \$150 million. Roland Yunghans has given a report that approximately 15 percent or 145 thousand acres of the entire coastal acreage will be subject to legitimate tideland claims. That is his estimate at the present time. The dollar values could fall between \$35 million and \$145 million for those coastal acreages. In addition, the tidal Delaware area of the State, 607 thousand acres, is arbitrarily defined as zones N through R - these are Mr. Yunghans' zones - and 90 thousand acres within this area could be subject to legitimate tidelands' claims. Dollar values could be as little as \$20 million or as much as \$90 million. As you know, valuation depends on the individual property. These are Roland's figures.

ASSEMBLYMAN GORMLEY: I understand with valuation, we get two sets of appraisals by two different appraisers.

MS. YASKIN: You get five and you get five.

ASSEMBLYMAN GORMLEY: But the point is, to have reached that conclusion, there had to be particular ground. I am not saying either of you talked to the

Governor's counsel, but there must have been somebody from some department who said ---

MR. GRAHAM: We didn't arbitrarily arrive at what the area of investigation was. The area of investigation was determined by photography about where grasses grow and what would be the legitimate head of tide to go to in order to map that. That is how we arrived at ---

ASSEMBLYMAN GORMLEY: In other words, you might not have given a conclusion ---

MR. GRAHAM: We didn't walk out and take a metes and bounds description and say with any ---

ASSEMBLYMAN GORMLEY: You didn't have the accuracy of metes and bounds; but obviously, if the Governor's counsel was going to use it, he based his dollar figure on specific land masses that would be affected. Is that fair to say?

MS. YASKIN: I think he said "as much as." I think probably he was relating to that figure from Mr. Yunghans where Mr. Yunghans says, "Well, I look at the Delaware River and it obviously is a tidal body and it flowed on either side since God created it, I assume. So, there is very likely in these blocks of land that are adjacent to the Delaware River coastal and riparian lands. Even if I use a conservative estimate of how much land that is, at an average figure of what we sold land for along the Delaware in this area, it can be as much as \$150 million." He gives me ranges between \$20 and \$90 million and \$35 and \$145 million.

ASSEMBLYMAN GORMLEY: Can we have a copy of that report?

MR. GRAHAM: We will give you any information you want.

ASSEMBLYMAN GORMLEY: I am just asking if I can have one.

MR. GRAHAM: Sure. You can have a copy of any technical information you want. Whatever technical information you want, just ask me.

ASSEMBLYMAN GORMLEY: That technical information would appear to, at least, pinpoint the area a little bit.

MR. GRAHAM: Sure.

ASSEMBLYMAN GORMLEY: Dealing with something specific, the City of Atlantic City, it was reported in the Atlantic City Press - you don't have the article in front of you, but I think I will be very accurate in repeating it - that the "mapping" - and I guess we are talking about the infrareds - were done over nine months ago. Do you agree with that?

MR. GRAHAM: Well, they are submitted to the Tidelands Resource Council in stages, as I said. The balance - well, up to 50 percent - will be completed in a year. Thirty-four percent is complete now, but at different stages. As 25 maps are completed, they are submitted - that preliminary work product is submitted for review.

ASSEMBLYMAN GORMLEY: What I am saying is this: The process approved in the City of Newark case was completed nine months ago or a little bit more, 9 months and 3 weeks, for the City of Atlantic City. That was completed.

MR. GRAHAM: I don't believe so, no. I don't believe so.

ASSEMBLYMAN GORMLEY: Is it complete?

MR. GRAHAM: No, it is not complete, but it will be complete by September. Let me clarify that for you, Assemblyman, so that there is no misunderstanding or nothing is out of whack here. We submit the maps in different quads. They are submitted to the Tidelands Resource Council as they are finished. The balance of the zone that encompasses Absecon Island is either complete and has not been submitted or has been submitted. But next month, the entire area that you are interested in, specifically here, certainly will be completed.

ASSEMBLYMAN GORMLEY: It will be completed within the next month. But I am relating to ---

MR. GRAHAM: I want to say that that other piece has to be put in. I am saying six months at the outside. Hopefully, when Fitzgerald is done by November, we will sit down and make the decision, "Here is the final map. Go, put it in," - as early as November. Give me six months. Give me a thirty- or sixty-day leeway.

ASSEMBLYMAN GORMLEY: Are we mixing scientific processes to get a result?

MR. GRAHAM: No.

ASSEMBLYMAN GORMLEY: It appears to me that we are saying, here is the one process, the infrared process, and it doesn't show a particular result, which it cannot possibly show. Then we are going to go to alternatives.

MR. GRAHAM: Additions, not alternatives - additional data. Seeking out information from an additional data base is exactly what is being done. We are not seeking out an alternate methodology other than the mapping. There is a difference.

ASSEMBLYMAN GORMLEY: But the point is, what you are saying is: We are in areas where the infrared doesn't work. We are going to check out everything else.

MS. YASKIN: Oh, of course.

ASSEMBLYMAN GORMLEY: Okay, fine.

MS. YASKIN: I would think the people would want you to.

ASSEMBLYMAN GORMLEY: Good. I am going to get back to my point that that could have been done since '71. That was not subject to the City of Newark case.

MR. GRAHAM: Stipulated.

ASSEMBLYMAN GORMLEY: Fine. Thank you.

MR. GRAHAM: Stipulated, if that is the point.

ASSEMBLYMAN GORMLEY: Well, believe me, it is an important point because if every time we talk about beachfront property, we hear, "Well, we waited for the City of Newark case," and the City of Newark case doesn't apply, I think it is a fairly important point.

MS. YASKIN: I think that takes it somewhat out of context. I have told you what our concentration was. Let's not argue over it here, Assemblyman.

ASSEMBLYMAN GORMLEY: Of the 72 percent or 75 percent of the State that is completed ---

MR. GRAHAM: Thirty-four.

ASSEMBLYMAN GORMLEY: Sorry about that. Is this the key map that you used - key to index?

MR. GRAHAM: That is just the index map. I can give you basically where it is.

ASSEMBLYMAN GORMLEY: Can you tell us which counties have been done?

MR. GRAHAM: Bergen, Hudson, Middlesex, Monmouth, Passaic, parts of --- well, down to Ocean are complete. The maps are submitted. Parts of Ocean, parts of Atlantic, Burlington and Cape May are in the latter stages of completion. Then we will head on up the Delaware in sequence.

MS. YASKIN: I think the point is the east coast was done first, obviously.

ASSEMBLYMAN GORMLEY: You gave us a total earlier of the number of square miles in the State of New Jersey. Let's assume we take all these processes together and we go to historical data and whatever. What is the maximum percentage of the State of New Jersey to which there could be a riparian claim? Are we talking 10 percent, 40 percent, 60 percent? What percentage of the State of New Jersey?

MR. GRAHAM: Hold on. The total area of possibility, if you will, ---
ASSEMBLYMAN GORMLEY: --- of possibility.

MR. GRAHAM: --- is 30 percent. That is a concrete figure, by the way. Now, of that 30 percent - that is the investigation area - it is expected that a lesser degree of that will actually be in the final analysis subject to a riparian claim.

ASSEMBLYMAN GORMLEY: Do you have any idea of what percentage you could pinpoint that at?

MR. GRAHAM: Given a minute, I do. It is something I reviewed before I came. About 235 thousand acres or 367 square miles.

ASSEMBLYMAN GORMLEY: How many acres did you have?

MR. GRAHAM: 235 thousand acres. That is the estimate of what in the final analysis will be actually a riparian claim.

ASSEMBLYMAN GORMLEY: How many total acres do we have in New Jersey, 5 million, 6 million?

MR. GRAHAM: I just told you before. I gave you square miles.

ASSEMBLYMAN GORMLEY: You gave me square miles and then you gave me acres. Don't get me confused.

MR. GRAHAM: 8,204 square miles. Somebody can wrap that up by using a square and gain the acreage. If you use square miles, I think the public will understand.

ASSEMBLYMAN GORMLEY: Of course, for the record, that is merely an approximation now. That is not a hard and fast figure.

MR. GRAHAM: But it is pretty accurate based on the high-flight photography --- What do you mean, what we own?

ASSEMBLYMAN GORMLEY: Yes.

MR. GRAHAM: What the State of New Jersey owns?

ASSEMBLYMAN GORMLEY: What they would claim.

MR. GRAHAM: What our land mass is?

ASSEMBLYMAN GORMLEY: No, I am saying the 235 thousand acres.

MR. GRAHAM: I would think so.

ASSEMBLYMAN GORMLEY: And that is based on ---

MR. GRAHAM: It is an estimate by the scientists that are doing it that that possibly will be the area of the legitimate claims.

MS. YASKIN: I think the way to put it now is that it is the best estimate of the experts that we have right now.

MR. GRAHAM: In the coastal area, 15 percent of the investigation area would be a good figure, a good guesstimate, of the land subject to a legitimate tidelands claim under that legislation.

ASSEMBLYMAN GORMLEY: As to the policy of the Attorney General's Office ---

MS. YASKIN: By the way, you should note that much of that is already granted.

MR. GRAHAM: A lot of it is.

MS. YASKIN: Much of that is already gone.

MR. GRAHAM: Especially in the coastal area, the Atlantic coastal area.

MS. YASKIN: I can't give you a percentage, but a portion of that has been granted. I can't tell you whether that is 30, 40 or 50 percent today. That is one of the reasons why Don and I have been discussing the possibility of conveyance overlays, so that citizens would also have what you are concerned about, the ability to walk in and put an overlay over their territory and say, "Oh, that is granted."

ASSEMBLYMAN GORMLEY: One question, and then you can go on with your

testimony. I am curious regarding the policy of the Attorney General's Office, if there be such a policy. You talked earlier that you could see the viability of a homeowner's exemption from something like this. I hadn't heard of that before. Would you say it would be the policy of the Attorney General's Office that if you started procedure --- Assume you have a procedure for settling these claims once the mapping is done. Will it be applied equally across the board, no matter what the ownership might be, whether it be commercial or private ownership, or whatever it might be? Once you talk exemption, I am curious. Would it be your policy to exempt a certain group of people?

MS. YASKIN: Constitutionally, right now, we can't exempt anyone. Let me tell you one of the things that has been uppermost in our dealings in the few instances where we have come across lawlessness. By that I mean, a developer has gone in - particularly in some of the shore communities - knowing full well about riparian lands, and title companies have insured such property, knowing full well about riparian lands and the State's and the people's rights, and opened up bay areas, have built lagoons or filled in marshland. They never received a riparian grant. They sell the hundred homes built around the lagoon to people who are innocent. That is, they go to a title company in good faith and they get that title policy in good faith. They buy that land and they want to buy good title to that land. They are innocent people.

In the three or four cases that we have had - and they are very recent ones that I am thinking of; I did not do a research of this history - what we have done, since the Constitution requires fair market value, is obtained that for the School Fund. The people who have paid that are the developers of the land who broke through without getting the riparian rights or the title companies who insured the property without exempting riparian rights or alerting the homeowners. The most recent case we have settled. Please keep in mind we do have the permission of the Legislature to settle cases. The funds do come in that instance, the most recent case, from those sources. In other words, what the homeowners have is recourse. They are not stripped naked to the world without recourse for having been the victims of other people's lawlessness. So the State and the School Fund get the moneys that the Constitution requires and the people responsible for the action have been responsible for paying the fair market value.

ASSEMBLYMAN GORMLEY: What we are talking about - and we went through this at the last hearing - are circumstances of lawlessness that would not be affected by the constitutional amendment. The instances you cited --- I am not saying there could not have been instances of lawlessness prior to 40 years ago. The ones that you are citing, the individuals who did the filling, are of recent time. So, the constitutional amendment ---

MS. YASKIN: Within the last 30 or 40 years.

ASSEMBLYMAN GORMLEY: I am saying that it happened within the time frame of the amendment. So the lawlessness that you are talking about would not have been affected.

MS. YASKIN: Most of those instances that we have recently been litigating have been within the last 40 years. That is not to say --- we have not had the resources and do not have the claims yet delineated to go to other areas and insure that that was not done. We have done 34 percent, coming down the east coast. When we come to instances like that, we will still have the right now to go to that kind of instance without having to find out did it cease flowing 30 years ago, 40 years ago, 45 years ago, 41 years ago, 39 years ago. And the impact, as I have told you, of that constitutional amendment would require that additional ---

ASSEMBLYMAN GORMLEY: Because you are under a constitutional mandate to apply the law equally to get the fair market value --- Let's go back 40 years or 50 years. Let's assume this is the Chemical Control Corp of developers and it is bankrupt, which is something that we have run into. And let's assume the policy is for 60 years, or whatever, and we have a limit there. Because you must apply it equally and because you don't have the developer anymore - and this many times will happen after a 40-year period, and I say Chemical Control Corp. not because it is the same situation but because it is a real situation of what has happened with somebody who would do something to the environment --- because you must apply it equally, you must eventually get to that landowner.

MS. YASKIN: Well, what we either have is the land --- In this instance nobody wants the land because we all know what has happened to it. It is a polluted pest hole that we the people of this State are already responsible for trying to clean up.

ASSEMBLYMAN GORMLEY: I am not talking about Chemical Control Corp. I am talking about the concept. Don't say I am extending our hearing to Chemical Control Corp. I gave it as a hypothetical. Forget that land. Go to another piece.

MS. YASKIN: What would we do with it?

ASSEMBLYMAN GORMLEY: Yes.

MS. YASKIN: If we had a bankrupt company like that, obviously they don't have the ownership of the land. Their title would be not valid with regard to that portion of the property that was riparian. So the State has for whatever good it is - God forbid it is a piece like Chemical Control's --- Assuming it is a company I had more recently - and I don't want to name the company, but it was a national company and they were selling a piece of property. They hadn't used the facility for years. They were a bankrupt company. But the new company who was purchasing the property agreed to pay the State for the property.

ASSEMBLYMAN GORMLEY: Excuse me for bringing that up because it clouded the issue. Let's hone it down a little bit. We go back 40 years, the developer doesn't exist anymore, it is the homeowner. For one reason or another, maybe it was a defunct title company, maybe the title policy has exemptions or it goes back over 60 years and you are under a constitutional mandate to get the fair market value and you don't have the title company and you don't have the developer, you get the homeowner.

MR. GRAHAM: It is a homeowner's property you are talking about?

ASSEMBLYMAN GORMLEY: Yes, or private land.

MS. YASKIN: I know of no such case that has ever arisen. I think probably the reason for that is: where you have development for that length of time, the riparian problems have probably arisen before and have already been resolved with fair market value.

Most property of that nature - we really are talking about undeveloped property. There you have a piece of property that may be held for speculation or may be held by a municipality for greenacres or open-air areas. There we would have to go to the municipality.

ASSEMBLYMAN GORMLEY: Wouldn't you say that these concepts that have started the debate have started with the larger developments once they come up. We talk about the Meadowlands and whatever. But you have never really ---

MS. YASKIN: Or Atlantic City.

ASSEMBLYMAN GORMLEY: I think it is appropriate to talk about them because if one area is going to be mapped, for sure, that is going to be the one area that's going to be mapped. So, they're mapped and that's it. So, they're definitely not the issue because they're going to be mapped. I think that's a pretty fair--

MR. GRAHAM: They're being mapped with the rest of the coastal areas of the State of New Jersey.

ASSEMBLYMAN GORMLEY: Yes. Let me put it this way. They're being mapped now and will be completed within a month, as you stated.

MR. GRAHAM: With an additional part of the coastal area of the State of New Jersey, that's right. We'll have the preliminary work products. There are two different things here that we talked about before. We will have that completed within one month. By the end of August, the final mapping will be submitted, that's preliminary work product. Hopefully, we will have that other piece that you talked about before attached to that mapping process by November.

ASSEMBLYMAN GORMLEY: Well, we can go back, but it if has to be applied fairly under the law and we go back 40 or 50 or 60 or 70 years ago, back to the change of title, whether it is a business or whatever, the landowner, whoever that might be, whatever entity that might be, would be subject to the claim and you are required to do it, whether you like it or not.

MS. YASKIN: Oh, absolutely.

ASSEMBLYMAN GORMLEY: I'm not saying that you would go out and pick and choose. You would have to apply it equally, once you have all these maps done and if you are a landowner and they can't get the title company and they can't get the money from the original developer who, after 40 or 50 or 60 or 70 years, might not be there anymore, you have to go against the owner of the property.

MR. GRAHAM: If someone seeks the clear title, the conveyance title, and there's a question about that title, the answer to your question is yes.

ASSEMBLYMAN GORMLEY: Thank you.

ASSEMBLYMAN MATTHEWS: The question to follow from that, since it has taken you so long, is there any kind of hold harmless thing? In other words, a piece of property is going to escalate in value, through no fault of the homeowner. The property goes from 1968 to 1985 and, all of a sudden, the value goes from \$1000 an acre to \$50,000 an acre. Isn't that kind of unfair?

MS. YASKIN: The statutes require that it be fair market value at the time of conveyance alienated from the State to the individual, or the corporation, or whoever. That is what is required by law. So, it is the time of the alienation, not the time that the owner took the property.

MR. GRAHAM: That's the law, Assemblyman.

ASSEMBLYMAN MATTHEWS: I know that's the law, but laws can be changed. You know, you talk about land grabs. Once again, isn't this a land grab, if you're just going to make a land bank. You know, that's what it seems like. It could be interpreted as such.

MR. GRAHAM: That is the farthest thing from accuracy.

ASSEMBLYMAN MATTHEWS: Well, let's be realistic. That's what is going to happen. The land is not going to devalue. It is going to escalate in value and, at the same time, people are saying, "Please, let us buy the land. Anything, tell us." But, now you can't tell them and it goes off into something less than infinity.

MS. YASKIN: Let me tell you what is happening. Perhaps the best example of that is the Atlantic City casinos. This problem in Atlantic City, the

question of the north shore and how the sands, the beach was accreted there, was originally brought to us by title companies and casinos in Atlantic City. They, on their own, and several title companies saw that there was a question. I have a map with me today, Assemblyman, which I would be happy to show you, whereby, in the same year, applicants along the north shore were using high water lines 1000 feet apart from each other and there was a question about what the condition of the beach was and how that land accreted. None of the title companies nor the casinos nor we, at that juncture, were able to say with definition natural accretion, and therefore it belongs to the upland owner, or artificial accretion or evulsive accretion and, therefore, it belongs to the people of the State. What none of us wanted to do, not the Attorney General's office, not the Department of Environmental Protection, and certainly not the casinos, was stop the development in Atlantic City. It was clear that the Legislature had enunciated that casino gaming was to develop in this state and it was to provide a basis for rejuvenation of Atlantic City. I met, if one hour, five hundred hours, with every casino applicant who came to me with a problem. None of them were blocked from development, whether Bally or Resorts or Playboy or any other casino operation. They went forward and were able to devise and freeze their market value by arriving at a compromise whereby they gave a small percentage, 10 or 15%, depending on the size of the land mass, up front to the state and they have agreed contractually that for three years they would allow the state to probe this question of accretion, while they too would be probing the question of accretion. If, at the end of that period, by contract, the State did not want to assert a claim, we would walk away. They would already have, and they already do have, deeds to this property. If, however, the State was able to assert its claim and commence litigation within that three year period and if the State was successful in that litigation, then they would owe us some money and only then, and the fair market value is fixed at the time we agreed contractually to this arrangement. There is not one individual in Atlantic City who can come to you and say that the riparian land issue is the reason there hasn't been development. The 56 acres of which you spoke has been one of the most complex problems for Atlantic City. It has been involved in several options given by the Urban Housing Renewal Authority. It has been the subject of federal litigation, which was not settled. I don't know the date, but it was within the last year.

ASSEMBLYMAN MATTHEWS: January, 1981.

MS. YASKIN: I'm sure it was within the last six months then. And, now, Resorts and its representatives and representatives of the Urban Renewal Authority, have had the opportunity. They have met with me and with members of my department and the Department of Environmental Protection at any time they have so requested. We have presented to them several options, not one, four or five alternatives for development of this property to proceed at this time. Yes, it will cost them some money in addition to the \$5 million for which they purchased the 56 acres. Any developer who wishes to develop that property knows that the land value is still an excellent land value to go ahead and develop. The Urban Renewal Authority has had access to our office and I know Resorts will testify to the same. We have attempted, through negotiations, to resolve this matter. Resorts has always had the option to await a resolution of this matter and I have tried, and Don and I have agreed that we need a resolution for Atlantic City. Ordinarily we don't take people out of order, but because of the dimension of this problem, the 56 acres, and the potential for housing for Atlantic City, we can take things out of order and we will do it out of order.

It should be noted that the riparian lands with that 56 acres is not the portion which is scheduled for development for housing. It is the very frontage near the boardwalk, clearly where the ocean once flowed, which is scheduled for casino development. So, let us not misunderstand that we covet the entire 56 acres. It is the front portion of the property, which is scheduled for casino development.

I don't know how to make myself more accessible, with the duties that we have. We have tried to encourage development and permit it. No other applicant, other than Resorts, has chosen not to choose one of the many options that is available for them to go forward. That is not to criticize Resorts. They are business people and they make business judgements. They are well represented and they have the availability of experts and money and talent and legal representation. What I am saying is that the State is meeting with those developers and has attempted, within the constitutional confines of our duties, to reach a resolution of that problem. But, if anyone is to tell you that the reason that 56 acres is not developed today is riparian lands, it is a misrepresentation.

ASSEMBLYMAN MATTHEWS: You are saying that, if Resorts wanted to, they could start building on that tomorrow, they could work out something tomorrow.

MS. YASKIN: I believe that is so and I think you should probably ask the representatives of Resorts as to whether or not--

ASSEMBLYMAN MATTHEWS: I'll ask them, but I'm asking you first. You are saying, from your standpoint, that they could start development tomorrow.

MR. GRAHAM: Based on arrangements made elsewhere in the City, that is the representation, yes.

ASSEMBLYMAN MATTHEWS: All right, let's go to--

MS. YASKIN: And those options have been made known to them.

ASSEMBLYMAN MATTHEWS: There is going to be a gentleman here to testify later, but what about the small landowner. Why can't they sit down with representatives of DEP and say, "Hey, we want to buy this one way or another, but hold us harmless, we want to work out the same kind of transaction?"

MS. YASKIN: Oh, this contract could worked out with an individual landowner.

ASSEMBLYMAN MATTHEWS: How come, for the last three years, no one ever told me about this when I inquired about the very same thing to the Governor's office and everything else, and I was shut out.

MS. YASKIN: I'm sorry, Assemblyman. I never had the opportunity to speak to you about this specific problem. I would be happy to meet with you and I believe you mentioned a municipality that had this problem. I would be happy to meet with you anytime, anyplace.

ASSEMBLYMAN MATTHEWS: Once again--I started off with this question and I'm going to end up with the same question--with the maps that Yunghans gave last year, I'm still unclear in my mind. I understand that you had a target date and all that. What review process--and I know we're talking about November, on the outside, 1981, which is 14 months later--what ingredients go into this 14 months, from the maps he gave? He's a scientist, I assume, I never met the man, but he's a scientist. What other ingredients are they going to throw into this that he hasn't put into it? I'm just not clear on that.

MS. YASKIN: I mentioned Mr. Fitzgerald. He is an expert, a geomorphologist. He studies the movement of tides and the impact of them.

ASSEMBLYMAN MATTHEWS: In other words, Yunghans is not an expert in this area?

MS. YASKIN: That's not his field, that's correct. So, that's one impact of it. Two, Mr. Yunghans has some historical data and we are gathering more. We do have at least one indication of major fill. We know that a jetty was built in the inlet. We know of some artificial construction and impact on that property. I think it is the pieces that have to be given to Mr. Yunghans to fit into his--

MR. GRAHAM: It is simply a lot of groundwork that has to be accomplished, to look at whatever data base is available to us to make absolutely certain before we make a final recommendation to the Tidelands Resource Council that these are accurate representations of what the claim should be on that island of Absecon or any other island along the Atlantic or Delaware coast of the State of New Jersey and that it is accurate to the greatest and most substantial degree possible.

ASSEMBLYMAN MATTHEWS: I guess I was in computers too long. It seems as though instead of doing pieces of it, you would do it all collectively. Why give a partial or an incomplete package to the Tidelands Resource Council?

MR. GRAHAM: It is a work product finished by the Office of Environmental Analysis, who have done their job and done it well. They have submitted that to the Tidelands Resource Council. There are other questions--

ASSEMBLYMAN MATTHEWS: Why would they submit it to them? That's my question.

MR. GRAHAM: Because they are finished with their work chore.

ASSEMBLYMAN MATTHEWS: Well, why wouldn't they come back--

MS. YASKIN: I would probably agree with you. I would say, why wasn't it held up. Do you want to hold it in his office or do you want to send it to the next level that has to review the maps?

ASSEMBLYMAN MATTHEWS: But, if there are missing pieces, wouldn't you want to put all the pieces together before you gave it to them?

ASSEMBLYMAN GORMLEY: Wait a second. Who is in charge of fitting the pieces? I think that is the question.

MR. GRAHAM: I am.

ASSEMBLYMAN GORMLEY: Is Mr. Yunghans in charge of it?

MR. GRAHAM: He works for me and I have the ultimate responsibility.

ASSEMBLYMAN GORMLEY: Does Mr. Yunghans agree that the pieces should be put in or does he think that the map is enough?

MR. GRAHAM: Mr. Yunghans has completed his work chore. He feels that what he has done is an accurate representation utilizing the methodology that he is competent to utilize.

ASSEMBLYMAN GORMLEY: Does Mr. Yunghans feel that he could testify as an expert witness combining the two together or would he only be able to testify about the one?

MR. GRAHAM: He would most likely only be able to testify to the one. I don't mean to mislead you that the man is not competent to look at other historical data and to differentiate from the two.

ASSEMBLYMAN GORMLEY: What I'm saying is, you are developing the expert who, I assume, will testify in the cases and he is going to say, "This is the line." Well, obviously, if he is going to use two different systems--

MR. GRAHAM: If there is substantial information available that was not encompassed in his work chore, he would then look to the substantial nature of that information and if it was relevant, if it changed that process, if it in fact reduced the claim or increased the claim, he certainly would include that.

ASSEMBLYMAN MATTHEWS: Are you telling me that it is linear from the standpoint that to go to B, you must complete A? Is that what you're telling me? In other words, whatever Mr. Yunghans does, nothing else can be done to this until he completes that. That's what I mean by linear. In other words, first you have to have this and then you must have this. Is that case or can you be working cinergistically or collectively?

MR. GRAHAM: We're working simultaneously.

ASSEMBLYMAN MATTHEWS: Then, how come there is a 14 month delay from the finish of one product until you get to the finish for the final product? You're probably explaining it, but I'm missing the point. I don't know why this delay process has been happening.

MS. YASKIN: Because the one job, in this instance, was with regard to beach front. That is much more simple than the groundwork that is necessary to put the other pieces in. We've talked about taking a picture of a beach where grass never grew which is not so hard. There's nothing there. If you have to go and look at individual areas and tell me what the storm impact has been for the last 50 or 60 years, if I have to go and examine title work, if I have to look at fill permits and surveys, you're talking about a much more individualized research project than you are talking about with the kind of work that Mr. Yunghans mapped.

ASSEMBLYMAN GORMLEY: Excuse me. Why isn't Mr. Yunghans doing everything? That's the question I want to ask. He's the person in charge of mapping and now, all of a sudden, he's done the mapping. Why doesn't Mr. Yunghans do everything? It would seem to me that he put it all together.

MS. YASKIN: He will put it all together in the end.

ASSEMBLYMAN GORMLEY: Does he agree with the process of plugging in these other sections? Does Mr. Yunghans agree with that?

MR. GRAHAM: Well, I'm the ultimate decision maker and I agree that it is necessary and in the best interests of everyone that we look at the additional information.

ASSEMBLYMAN GORMLEY: Does Mr. Yunghans agree as a scientist and as a professional and as the expert witness that these should be plugged in?

MR. GRAHAM: He understands and he agrees absolutely that the final work product submitted and adopted by the Tidelands Resource Council should leave no base uncovered and we should look at anything available to us in order--

MS. YASKIN: And he agrees with the plugging in of the historical data.

MR. GRAHAM: Absolutely. If it is substantive enough, he will put it in.

MS. YASKIN: You can't plug in what you don't have yet.

ASSEMBLYMAN GORMLEY: You don't have the historical data?

MR. GRAHAM: We have some; we don't have others, and that's going to be done in very short order and I submit to you, and this is a very difficult thing for us to say, that we feel we've made a competent decision. We feel, in the absence of this additional historical data and the short period of time it is going to take us to accumulate it, if we didn't see if it was germane and if it should be plugged in, we would be remiss in our duty.

ASSEMBLYMAN GORMLEY: How long does it take to plug in the historical data?

MR. GRAHAM: I just told you before that we hope to have that completed by November.

ASSEMBLYMAN GORMLEY: This November?

MR. GRAHAM: Yes. I said that at the outset when we started.

ASSEMBLYMAN GORMLEY: So, we're talking about a situation--and how long until the infra-reds are done for the whole state?

MR. GRAHAM: We hope to complete the entire mapping process, and I again go back because--

ASSEMBLYMAN GORMLEY: Believe me, I want to try to get some yes or no questions. Mike and I have sat here and I can understand that you want to repeat it and be very clear, but I'd like to get this honed in a little bit. How long for infra-red, just infra-red?

MR. GRAHAM: We're on schedule, producing what we're physically capable of doing year by year, 200 to 210 maps of each sub-area, which is $\frac{1}{2}$ square mile. We are producing those maps at the rate of 200 to 210 maps per year. We're not capable, even if we quadrupled the staff, to do it any quicker. Using that time frame, using the amount of work that we have to do, we're talking about completing the entire state by the end of 1985.

ASSEMBLYMAN GORMLEY: In other words, the delay until 1985 is based on the process approved.

MR. GRAHAM: There is no quicker way to do it, given Mother Nature, who we are totally dependent on, with the approved methodology that the courts have approved.

ASSEMBLYMAN GORMLEY: But, you are going to, at least I would assume, at least after today's hearing, in those areas which are strictly beach, I assume that you will just go to historical data immediately on those and not wait for infra-red.

MR. GRAHAM: We've been doing it and that's the work chore we hope to have done by November. I'm sorry, that's just for Absecon Island.

ASSEMBLYMAN GORMLEY: Just for Absecon Island? In other words, you're not doing the other areas of the State--you're holding up other areas of the State although certain of them are beach and would not be subject to the infra-red anyway.

MR. GRAHAM: We have not now and we haven't then. We're simultaneous with the work chore taking place on Absecon Island. We are also looking at what we have to do to add additional information to the other maps that are before the Tidelands Resource Council and those that will be submitted to them. Yes, we are looking at the historical data and it will be done simultaneously.

ASSEMBLYMAN GORMLEY: Who is doing the review for the Tidelands Resource Council? Are you doing it?

MR. GRAHAM: Myself, my own staff, and the staff of the Attorney General's office.

ASSEMBLYMAN GORMLEY: So, actually, you are the staff of the Tidelands Resource Council?

MR. GRAHAM: The Division of Coastal Resources, which is one of the divisions in my department--

ASSEMBLYMAN GORMLEY: In other words, you are the manpower. They make the vote on the map, but they turn around and say, "Mr. Graham, where's the information, we're relying on you."

MR. GRAHAM: Yes.

MS. YASKIN: I would point out that some of those individuals have expertise in this area and they will ask Mr. Graham or me a question about the production and whether this is proper.

ASSEMBLYMAN GORMLEY: As far as putting the map together, let's assume-- and I won't agree with everything--but let's assume that you're going to plug it in and you come up with a total map. The Attorney General's office available for purposes of providing grants.

MS. YASKIN: We give legal council to the Tidelands Resource Council, for example, on the mapping, what the courts have required with regard to legal proof in establishing a state claim, with regard to developing contracts and grants, which you mentioned.

ASSEMBLYMAN GORMLEY: Excuse me. Just on maps. Really, when it comes down to it, input from the Attorney General's office on the procedure to establish where the water once flowed, and that's what we're talking about--

MS. YASKIN: That is not purely scientific. There are lots of legal questions.

ASSEMBLYMAN GORMLEY: As to where the water once flowed?

MS. YASKIN: Yes. What is sufficient in a court of law.

ASSEMBLYMAN GORMLEY: I didn't ask that. I meant as to where the water once flowed.

MR. GRAHAM: The scientific staff under my responsibility, in my jurisdiction, are the ones that put that information there. The Attorney General's office is part and parcel of that process, as they were in the City of Newark case in proving the methodology. I would be a fool if I proceeded as an administrator with a product that had not been looked at for its defenseability by the Attorney General's office.

ASSEMBLYMAN GORMLEY: I'm not talking about that. What I'm saying is, a map is completed and it is handed to the Attorney General. The Attorney General says, "Well, we can't prove that in court; that just won't hold up." I want to make sure that's being done. I want to make sure that it is not going to the Attorney General and they say, "Well, let's go look for another process for ten years."

MR. GRAHAM: That's not the case.

ASSEMBLYMAN GORMLEY: In other words, I want it to the scientific process where they, "Can that be proven in court"; "No, it can't. Why don't we tell these people that we have no claim to their property." I don't want a continuing situation of, "Well, this is this year's scientific procedure. Oh, there's a new book out this year."

MR. GRAHAM: Excellent question, Assemblyman. What we're attempting to do as quickly as we possibly can, with the other data that we're seeking out, is institutionalize it, draw guidelines for it which are acceptable, which are defenseable and which, when they become part and parcel of the mapping process and adopted by the Tidelands Resource Council, will be a legitimate and final claim.

ASSEMBLYMAN GORMLEY: What I'm saying is that this issue is peace of mind for a lot of people who own property along the coast. Let's assume that you put this map together. Is that it?

MR. GRAHAM: Absolutely.

MS. YASKIN: The Tidelands Resource Council's presentation is it. They promulgate public hearings, people can come and complain about it.

ASSEMBLYMAN GORMLEY: Not quite because, you know, we're talking about the Constitution in this case and the Tidelands Resource Council, let's assume that there is a constitutional amendment, then the Constitution usurps any act by the Tidelands Resource Council. And, let's assume a deputy attorney general, five

years from now were to say, "Wait a second, there was a superior scientific process that showed it flowed over 50% of the State of New Jersey, we went back to the age of the dinosaur--"

MS. YASKIN: But, there is something in our courts called equity. It has been a long standing principle.

ASSEMBLYMAN GORMLEY: And that's why we have adverse possession against private landowners, but we don't have it against the State, because we don't have equity against the State.

MS. YASKIN: That's not true. Equity does run against the State.

ASSEMBLYMAN GORMLEY: Not with regard to riparian rights. If it goes back to 1664, which we had at the previous hearing, as to when the State goes back, I don't consider that equity and I don't think you do.

MS. YASKIN: Well, I do because I think there are a series of statutes which deal with previous riparian grants and the implications of those grants having been made--

ASSEMBLYMAN GORMLEY: We're not talking about grants.

MS. YASKIN: --where the action of the State is bound by--

ASSEMBLYMAN GORMLEY: No. There's no action by the State. If you--

MS. YASKIN: There is an action where the body of the State, authorized to establish and promulgate claim lines, does so.

ASSEMBLYMAN GORMLEY: Wait a second. You have promulgated claim lines. You have done it by your statutory function. That's how you do it. It's not in the Constitution.

MS. YASKIN: Correct.

ASSEMBLYMAN GORMLEY: But, consequently, if there not be a constitutional amendment and in three or four years, where a grant had not been given, and a different scientific process came up, you could come up with a grant. That's why we get a constitutional amendment.

MR. GRAHAM: I cannot conceive--and I don't want to mislead anybody here, either inadvertently or whatever, and I don't think we should mislead anybody-- that after a mapping process which has been upheld by the Supreme Court of the State of New Jersey, undergone scrutiny by the best scientific witnesses possible, and we complete the last piece of it and we finally adopt those maps, we will have to, it is incumbent upon us to show the additional methodology, what we looked at. It is inconceivable to me, in my career of 20 years in this business, that the courts, after having gone through this exercise, any court down the road would say to John Jones, homeowner, "All right, that was okay three years ago, but we have a new Don Graham now or we have a new Judith Yaskin now and they say something different."

ASSEMBLYMAN GORMLEY: Have you ever heard of the Dred Scott decision?

ASSEMBLYMAN MATTHEWS: Let me ask you a question. I think you just contradicted yourself.

MR. GRAHAM: Why?

ASSEMBLYMAN MATTHEWS: Because, when I started off this thing by saying that the courts found the maps to be okay in 1980 and then Yunghans did the same process for the maps he turned over here, now you're saying a new process of historical data came in later which held you up 14 months.

MS. YASKIN: It's not a different process.

ASSEMBLYMAN MATTHEWS: Well, then, why aren't the maps that he put in last September that were upheld in May of 1980 valid, but you have to go another 14 months because of historical data?

MS. YASKIN: Because the historical data wasn't done and that's a failing. It is not new law and it is not new methodology, Assemblyman. Historical data has always been subject to proof.

ASSEMBLYMAN MATTHEWS: Then, why did the courts, in 1980, accept these maps without it?

MS. YASKIN: This was a separate problem, Assemblyman. This was a new scientific methodology in addition to the historical data examination, which they had always accepted with regard to proof. This photography, this evaluation of the flora that grew on the property with the scientific input into the riparian claim laws was what had to be validated. It was that new aspect, not the whole area of riparian claims or how you draw a map.

ASSEMBLYMAN MATTHEWS: The flora and the fauna? I don't know.

MS. YASKIN: I agree with you.

ASSEMBLYMAN MATTHEWS: In May of 1980 the court made a decision, right?

MS. YASKIN: Yes.

ASSEMBLYMAN MATTHEWS: Now, they made their decision.

MS. YASKIN: But, what was that decision, Assemblyman? It simply said that this is a method that may be used along with other methods.

ASSEMBLYMAN MATTHEWS: Fine. Now, comes along the same guy that prepared those maps and gave us new maps in September. Now, who made a decision in September of 1980 that his maps weren't complete? Who made that decision? Did the courts make that decision?

MR. GRAHAM: I did.

ASSEMBLYMAN MATTHEWS: Now, to go back to Assemblyman Gormley's question, in 1985, why can't another Don Graham come up there and throw something else in there?

MR. GRAHAM: Because the methodology that was approved for the City of Newark was a different set of circumstances than the open beach that we talked about before. Different things happen on the open beach. And, when we got done with the open beach, we found, looking at the data that we had, that very possibly we have increased the information that may be available to put it in. It is inconceivable to me that there is anything else that can be looked at after we go through it. Now, that's my own opinion. I can't say that that is the case, but it is inconceivable to me, from a lot of years of experience in this business, that that would happen.

ASSEMBLYMAN GORMLEY: It is my conclusion that a map is not final unless grants are given to all those areas not included by the map also. Let's just do it by the squares. Let's assume that everybody in a square has a grant, after the map is filed. It's all worked out. Let's assume that a year from now there is a new square. Okay? They have gotten a grant and there is a new scientific process that shows that that was riparian land. That person is not covered--

MS. YASKIN: No map was ever drawn of that area.

ASSEMBLYMAN GORMLEY: But, scientific data, strata, prehistoric data, something could come up, new processes, new photography or whatever it might be, showing that the lines go in further or whatever, that person, not having worked out the grant or whatever it might have been--The point is, the fact that you might do the map--

MS. YASKIN: Are you trying to say that you think we need this constitutional amendment to put a finality to the mapping procedure? If you are, that has naive appeal and I would hardly agree with you as I agreed with you in

other discussions that that has appeal. The one thing that is absolutely unclear to me is why after expert after expert has come to you and said, "At least let us map it once. We need five years."

ASSEMBLYMAN GORMLEY: Well, apparently, you have to counteract a naive approach by government with a substantive measure because it has readily been admitted today that the historical process was available to you and for a department of your magnitude and the Department of Environmental Protection to know that the beaches could have been mapped by the historical data, that just wasn't done. That just wasn't done for eight or nine years. Who is naive? You're naive to think that anybody would just sit here and listen to that and think, "Well, that's good enough. That's only eight years."

MS. YASKIN: It's been since 1979.

ASSEMBLYMAN GORMLEY: If we're going to start with remarks like that, they can go two ways.

MS. YASKIN: Assemblyman, I would be happy to start with remarks like that. I'm sorry that you feel that that remark was worth your animus. I was trying to explain to you that I understood what you were trying to get to, that is, after the mapping was completed, there should be rest with the mapping procedure and that a constitutional amendment would achieve that rest. That has validity. I, again, pointed out to you that I did not argue that there was validity in that argument. What I was trying to say to you was, let the State finish its mapping.

ASSEMBLYMAN MATTHEWS: Thank you. We will now recess for five minutes.

(at which time a five minute recess was had)

ASSEMBLYMAN MATTHEWS: I would like to call this hearing back to order. John McDermitt?

J O H N M C D E R M I T T: I'm John H. McDermitt and I reside at 2905 South Bay Avenue, Beach Haven Inlet, New Jersey. I have been a member of the Bar of this State for 32 years and for 20 of those years, I have been involved as counsel to title insurance companies and defending the insurance of those companies against riparian claims. I have spent 20 of those as Chairman of the Riparian Lands Committee and in other capacities in the New Jersey Title Insurance Association.

I would like to urge to this body that the private, little man with a quarter acre or half acre lot is very heavily involved and is being very seriously damaged by the failure of the State to perform the mandated mapping of the state.

I know of my own knowledge, although I speak only for myself, I know of my own knowledge of hundreds, literally hundreds, of owners of lots, small residential parcels who are inhibited in the sale of those parcels or in the mortgaging of those parcels by the tardiness of the state in performing mapping requirements. To say that the constitutional amendment is proposed or designed to protect large property holders is absurd. Particularly, it is absurd to say it with regard to property on the Atlantic Ocean frontage of Absecon Island in the City of Atlantic City.

There have been riparian grants made from the mean high water line out to the bulkhead line for all but a few hundred feet of that ocean frontage in the City of Atlantic City. Maps have existed showing those grants for at least fifty years, that I know of of my own knowledge. More than that, maps prepared by officers of the State of New Jersey have existed. These maps are ignored, except when it suits the State's purpose, as it did with Playboy, with Bally and some of the other landowners desiring to build casino-hotels.

The state dreamed up what, in law, is an impossible theory, to establish an illegal gap between some early mean high water line and the mean high water line of those grants. It requires the most torturous inversion of deed descriptions, inversions which violate every tentative real property law to arrive at the existence of such a gap.

One hesitates to disagree with such a distinguished member of the Bar of our state as the First Assistant Attorney General, but she is wrong when she said that they would take only 15% when she infers that there are only small dollars involved. They are not. They are very substantial monies. They have had a very serious, inhibiting effect on the construction, but that's all behind us now. Those casinos and hotels are built and in operation.

The First Assistant Attorney General is wrong when she says that there are no hotel-casinos which have not been built because of the State's claim. I know, specifically, of a parcel of land bounded on the south by the Atlantic City Expressway, on the east by Kirkland Boulevard, on the west by Beach Thoroughfare, and on the north by the railroad serving the City of Atlantic City, which was planned as much as five years ago as a hotel-casino and still lies unbuilt to this very day, and the hotel-casino planners, Trans-Expo I, Inc., have now found that their conditional permit to construct the hotel-casino has expired and they have a worthless parcel of land, so far as that use is concerned. So, it simply is not true that there have been no casino-hotels which have been stopped from construction by reason of the state's attitude.

But, the most consequential thing, given the enormous numbers involved here--our state population has risen to 7.5 million people today--and even the soon-to-be Chief justice of our Supreme Court talks about 155,000 acres of land. The problem is this smoke, this empassioned, emotional view that our incumbent governor takes and people who serve him take in approaching this problem. It is not necessary to be done. The resolutions can be had.

The private individual in our state is faced with enormous costs. The courts, in considering the mapping process, specifically in the City of Newark case where there was not just the City of Newark and the City of Elizabeth, but also a half dozen private individuals said or expressed doubt that a private citizen could carry the cost of this litigation. In that connection, I know of my own knowledge, the legal fees incurred by the City of Newark and other parties to the City of Newark came to \$100,000. This was one piece of litigation, although a very complicated one. For a private individual to litigate his 50 or 100 foot parcel fronting on alleged tidewater would certainly take on the order of \$20,000 or \$25,000.

I am in general practice and I have some understanding of the legal effort that is involved and the proofs that are necessary to be made.

So, I strongly urge you gentlemen to do whatever you can to keep the pressure on the Executive Branch of the Government and the Department of Environmental Protection to reduce these matters. It can be done and it can be done en masse. It doesn't have to be done on a map by map or sheet by sheet basis. I strongly urge you gentlemen and anybody else who is within the sound of my voice to support this constitutional amendment and support this constitutional amendment not because it is a perfect solution--there aren't any perfect solutions in this too finite world--but, it is a move to force the hand of the Department of Environmental Protection and I move to protect the individual landowners on lands abutting the tidewaters of this state. Thank you.

ASSEMBLYMAN GORMLEY: I have no questions for him.

ASSEMBLYMAN MATTHEWS: We will probably be in touch and we'll make sure you get a copy of this transcript. Thank you very much.

Charles Lee Harp?

C H A R L E S L E E H A R P: My name is Lee Harp. I'm an attorney with the Law firm of Archer, Greiner and Reid in Haddonfield, New Jersey. We represent the Housing Authority and Urban Redevelopment Agency of the City of Atlantic City in its efforts to secure redevelopment of what is known as the Uptown Urban Renewal Tract:

I have a prepared statement that I would like the opportunity to read into the record and I will give you all copies.

The Atlantic City Housing Authority and Urban Redevelopment Agency, which we will call "The Authority", is vitally interested in the swift resolution of the State's putative riparian claims to four boardwalk blocks of the The Authority's Uptown Urban Renewal Tract which covers 55 acres located between Atlantic Avenue, the Boardwalk, Virginia Avenue, and Connecticut Avenue.

This tract has been in the Authority's hands and off the tax rolls since the late sixties. More than \$25 million of public money has been expended to acquire the tract, clear it, and prepare it for redevelopment.

On October 22, 1976, the Authority entered into a redevelopment agreement with Resorts International, Inc. for the redevelopment of the tract in accordance with the comprehensive Urban Renewal plan. The redevelopment of the tract is expected to involve expenditures in excess of a billion dollars, with resultant enhancement of Atlantic City's housing stock, economy, and employment, both in the construction industry and in the business that will be housed in the project area.

But, the Authority's agreement obligates the Authority to convey good and marketable title. This obligation brings us to the need for a swift resolution of the ephemeral riparian claims of the State.

In the summer of 1979, the Authority learned that the State of New Jersey might claim ownership of four "gore" areas in the Uptown Urban Renewal Tract, totaling approximately ten acres. One of those gores overlays the first parcel of the tract which Resorts is contractually obligated to take down for the construction of a 1,000 room hotel.

In December, 1979, representatives of the Housing Authority and Resorts met with representatives of the State Attorney General's office in what was to be the first of several meetings to discuss the State's unproven, untested claims to the gore areas. All parties in those discussions recognized at the outset that whether or not the State had a supportable claim to the gore areas was a question of historical fact, and that the state had to develop data to sustain its burden of proof should the issue be litigated. It was understood by all parties that any resolution would be a function of a mutual evaluation of the State's chances of prevailing in a law suit to determine title to the disputed area.

The Authority understood that there was to be an exchange of factual information as it was developed. By January 15, 1980, the Authority was informed that the State's riparian mapping priorities had been reordered so that mapping of Atlantic City would commence in the spring of 1980, with an expected completion date in August, 1980.

In March, 1980, the Authority commissioned Stewart Farrell, Ph.D., to investigate the movement of the mean high water mark in the tract from 1852 to

the date of the riparian grants which allegedly resulted in the gore areas. Dr. Farrell rendered a comprehensive written report in which he concluded that the mean high water mark's movement was the result of gradual, natural processes. This indicates, of course, that the State has no claim to the gore areas. In keeping with the Housing Authority's understanding with the State that such information was to be exchanged, a copy of Dr. Farrell's report was sent to Assistant Attorney General Abelson on October 20, 1980.

Not until recent newspaper reports in the Atlantic City Press appeared did the Housing Authority realize that the State had, in fact, completed maps for the Atlantic City area. The Housing Authority expected that this mapping information would have been provided to it in the course of its discussion with the State.

Under the statute pursuant to which these maps were prepared, they are public documents, which must be disclosed to fulfill the policy set forth by the statute. Furthermore, the Tidelands Resource Council should perform its statutory function which, if the newspaper accounts are correct, would be to issue a statement of no interest in the alleged gore areas. As long as the question of state riparian rights in the Uptown Urban Renewal tract remains open, the Housing Authority is powerless to compel the redevelopment of the tract. Every day's delay in that redevelopment will cost the City of Atlantic City, its citizens, workers, the future occupants of the tract, and the citizens of New Jersey immeasurable economic damage.

At the moment, the Uptown Urban Renewal tract is the victim of the situation described by our Supreme Court in 1976 in "O'Neill vs. State Highway Department on page 316, where the Court said, "Since vast areas of valuable land are now idled by the tidelands controversy, and still other property already improved lies in its shadows, there is an economic blight which should be dissipated in the public interest."

This is the very situation that the tidelands mapping statute of 1968 was supposed to remedy. That concludes our statement. Thank you.

ASSEMBLYMAN MATTHEWS: Could I ask one question? The statement was made by Donald Graham and Ms. Yaskin that they could work out a deal as they have done with other casinos. Is that possible or feasible?

MR. HARP: I think the question is that a deal involves an expenditure of money. Our reports indicate that the State has no interest in this land, which would indicate a very low figure, to us.

ASSEMBLYMAN MATTHEWS: Have there been any negotiations at all on that?

MR. HARP: Well, there have been discussions, yes. Ms. Yaskin is correct that we have met.

ASSEMBLYMAN MATTHEWS: Wouldn't Resorts International get that money back if there were, in fact, no claims?

MR. HARP: That is not the nature of the discussions. The approach, as with the other casinos, would be a payment to the State for its interest, whatever that may be, even if it is nothing. But, when the money is paid, that's it.

ASSEMBLYMAN MATTHEWS: It just seems as though there is something that could be done. I know, from the Housing Authority's standpoint and certainly the City of Atlantic City's standpoint, we want this land developed and I just thought there could be some kind of deal worked out. I would like to know if there is some kind of strategy that could be planned to expedite this somehow. I got no answers from Judy or Don that indicated that they are willing to have the mapping done before November, but, of course, that means litigation because somebody is going to go in there and say that they disagree with it, especially if the contention is that Resorts

International, in this case, says, "Hey, according to our experts, they don't own any of that land." Then, you get into a court battle that could last how many years. I'm trying to think of a way to, at least, keep the development going or start it.

MR. HARP: The problem is that we're negotiating in the dark. We had a study performed, historical data, piles of maps, and sent it off to the State in an effort to lay our cards on the table for a discussion of how strong the State's claim, does it exist at all. At the moment, all we see is our report, and I'm not speaking for Resorts. We're right in the middle of this and the Housing Authority is very anxious to go forward, but we're really negotiating in the dark. The information, the maps, we would be very interested in seeing those, which is what the point of my statement was, so that an evaluation could be made. It's very hard to persuade somebody to spend X amount of dollars for a claim that may be worthless.

ASSEMBLYMAN MATTHEWS: I'm just trying to think if a meeting would be fruitful, if the legislators sat down in public with the people from the casino, Resorts International, and the Housing Authority, if that would be of any consequence at all. Could we try and expedite something to have a meeting of the minds?

MR. HARP: Well, I'm not really prepared to answer that kind of question. We have had settlement negotiations, discussions going on and I really came here to read this statement and to confine our remarks to that.

ASSEMBLYMAN GORMLEY: I have a couple points, if I may. On page 2, you retained Stewart Farrell, Ph.D., who has done, according to your statement, and I know it to be accurate, has done the scientific review of all those of that area on all scientific procedures, exclusive of the infra-red process. In other words, what they say has to be done to complete it has been done by Dr. Farrell. They've completed the infrared and Dr. Farrell has completed the study of the accretion or the slow accretion of ground and consequentlty, the one basis that they claim for their one month holdup or their two month holdup or nine month holdup, depending on which day you get them testifying, has, in effect, been done by a very competent individual employed by an agency, the Housing Authority, which is independent of private developer interest and solely interested in the delivery of housing to people of low and moderate incomes.

MR. HARP: Is that a question, did we do a study?

ASSEMBLYMAN GORMLEY: Yes.

MR. HARP: Yes, we did. The study was of a scientific nature employing historical data and many maps.

ASSEMBLYMAN GORMLEY: And, that has been completed?

MR. HARP: Yes.

ASSEMBLYMAN GORMLEY: And, that has been made available to the Attorney General's office?

MR. HARP: Yes, since last October.

ASSEMBLYMAN GORMLEY: Just for the record, Mr. Harp, yours is an agency totally independent, a public agency solely interested in the delivery of low and moderate income housing.

MR. HARP: Well, I wouldn't say it is limited to low and moderate income housing. It is a public agency dedicated to the redevelopment of this tract, which is a mixed usage kind of tract. It has been described as a kind of city within a city with office buildings, commercial space, housing, hotels and what have you.

ASSEMBLYMAN GORMLEY: But, the principle point I'm trying to make, you heard the testimony of the previous two witnesses from the state, the Attorney General and Commissioner Graham, and their statements indicated that they had to

do additional studies, but the Authority has already paid for the particular or the studies of the same nature that they're talking about.

MR. HARP: Yes, I would say studies of the same nature.

ASSEMBLYMAN GORMLEY: They are already completed and were provided to them in 1980?

MR. HARP: That is correct.

ASSEMBLYMAN GORMLEY: And, you heard their testimony and these were the only types of studies that were holding up their final map for the City of Atlantic City?

MR. HARP: I didn't hear all of their testimony. I understand that that is certainly one aspect of it.

ASSEMBLYMAN GORMLEY: Thank you.

MR. HARP: Thank you very much.

ASSEMBLYMAN MATTHEWS: Thank you for your time. Ed LaDrew?

E D W A R D L A D R E W: My name is Ed LaDrew and I live at 1617 West Avenue in Linwood and the property in question is also in Linwood.

I feel that I am representative of the little property owner. I think that most of the testimony thus far has been with regard to the casinos and Absecon Island. My property, the question isn't due to accretion. Back in 1965, I built a dredge, I filled in the property myself and when application was made for construction, with a simple stroke of a pen, the State made a claim against my property, thereby putting a cloud on the title. Now since then, for four years, I'm no better off today than I was four years ago. After meeting after meeting with the Department of Environmental Protection, all I'm getting is a lot of gobblygook.

Now, after you called the recess, I had the opportunity to ask Mr. Gormley if he would read this letter. It is a letter from the Department of Environmental Protection and it is on State stationary and it is signed by James R. Johnson, Chief of the Bureau of Tidelands. I asked Mr. Graham if he was a knowledgeable person in a responsible position and he said that he certainly is. Well, according to this letter, and I would like to read some of it if I may. "Based on this additional information and reanalysis of available data dealing with the State's riparian or tidelands interest, it is my opinion, at this time, that the State will not assert a riparian or tideland ownership in that portion of the subject's property presently filled and above the elevation of mean high water." The next paragraph, he says, "Please note, this response must be considered unofficial." Anyway, his closing paragraph is a definite statement. He says, "Be further advised that tidelands grant or waterfront development permit, N.J.S.A. 12:5-3, will not be required for any further development of the filled portion of the subject property landward of the present mean high water line. Any development contemplated on the line of mean high tide will require certain permits."

Now, I asked Mr. Graham what he is saying here and he said that he is telling me to go ahead, but then he said that they may step in later and tell me that until the maps are promulgated that I can't do anything. So, what are they saying?

Incidentally, to go back further, I met with responsible witnesses, with Mr. Johnson, with Mr. Haines, and several other members of the Department of Environmental Protection and, at that time, they told me it would be 7 to 10 years before they could map this area. So, I asked Mr. Johnson, if I hired a registered engineering firm to secure this data, would they accept it and he assured me that

they would. I hired Mr. George Shilling and it cost me about \$1,700. His data was very favorable to me and this letter I read was a result of his submitting that data. But, now they say there is other data, something that never entered the picture before, flora, fauna, what else, I don't know.

ASSEMBLYMAN GORMLEY: How long have you paid taxes on that land?

MR. LA DREW: Well, my family has paid taxes on it since the early 40's, 1941.

ASSEMBLYMAN GORMLEY: Have you ever filed a tax appeal based on that?

MR. LA DREW: Yes, I have.

ASSEMBLYMAN GORMLEY: Was it granted?

MR. LA DREW: No. I subpoenaed Mr. Johnson to come down and testify at the county tax board of appeals and, at that time, he promised me that they would have this, the map would be completed on or before August of 1980.

ASSEMBLYMAN GORMLEY: So, you are paying full taxes on the zoned use, but you are unable to use it in the manner that it is zoned.

MR. LA DREW: That's correct. That's the problem I have with the whole thing. The State is saying that they own it and yet I have to pay taxes on it. The city solicitor has rendered a decision that my only alternative is to not pay taxes and then the City will foreclose on it.

ASSEMBLYMAN GORMLEY: That's a heck of an alternative.

MR. LA DREW: Yes. It is sort of putting you between a rock and a hard place.

ASSEMBLYMAN MATTHEWS: We would like to have a copy of that entire letter for the record, if it is possible.

MR. LA DREW: Okay. Mr. Johnson has made this promise under several circumstances, once at the tax appeal hearing and again in a response to a letter from my attorney. I have here another letter that also is signed by Mr. Johnson. He says, "As a practical matter, the only expeditious approach to the LaDrew case is for an application to be made to purchase, at fair market value, without reservations, all that area which we presently feel we can reasonably claim." Now, why would I buy property from the State when they haven't even proved ownership? Can anybody tell me?

ASSEMBLYMAN MATTHEWS: I can't.

MR. LA DREW: Here's one letter saying that the State has no claim against my property and here's another letter telling me to buy it from them.

ASSEMBLYMAN GORMLEY: That's the reason that the legislators from the county put in a constitutional amendment and I would say, if there is a single citizen in the county who was the voice in the wilderness when this whole thing started, I would say it was Ed LaDrew.

MR. LA DREW: Well, I felt that way. Incidentally, I read in the paper, the Atlantic City Press, very recently that the total contribution per student amounts to about \$2.00 per student.

ASSEMBLYMAN GORMLEY: That's correct.

MR. LA DREW: Well, if that's the case, I'll give my \$2.00 if they'll release my property.

ASSEMBLYMAN GORMLEY: That's more fair than the letters you got.

MR. LA DREW: Well, there's nothing fair about it. So, what more can I say?

ASSEMBLYMAN MATTHEWS: Thank you. All right, the last witness will be James Weidenor.

J A M E S W E I D E N E R: My name is James Weidener. I live at 9-12 12th Street in Fairlawn. That is in Bergen County. I am a surveyor in New Jersey and in eight other states. I have been involved in surveying for approximately twenty years. I have been involved in the Tidelands problem since 1974, in the Hackensack Meadowlands area. I have written nine professional papers that relate to Tidelands problems and mean high water line determinations.

The testimony we heard earlier from the DEP and from the Attorney General's office had some problems that I could see. For instance, there was comment to the effect that the mapping could not be completed faster; there was no way to speed up the work. In my estimation as an expert surveyor, the problem is strictly labor intensive. If you double the manpower on it, you should produce the maps just about in one-half the time. I cannot imagine why the maps cannot be prepared earlier.

I would also like to question whether or not the State is precluded from making claims based on changes to the shoreline from jettys or similar matters which they may have built themselves or approved the construction of, such as landfills they might have made themselves, or authorized on the shoreline after storms, etc. This may, in fact, preclude - although I am not an attorney - the State from making any such assumptions.

Further, I am aware, for instance, that in Ocean City the riparian grants off Ocean City go to 1,000 offshore. There would seem to be no reason to make studies of what the shoreline was or had been in the past when, in fact, it has already been granted offshore and should be precluded from ever making any such claims.

The State people talked about the fact that the small homeowner is not concerned, that they normally speaking would go after title insurance companies. I think if you investigate title insurance, you will find out that the title insurance policies that are most normally promulgated protect a mortgage and a mortgagor and not the homeowner directly, plus the fact that any increases in the value of the property that don't increase the value of the mortgage would be outside the policy.

The State, in their ability to promulgate these maps, simply waits for the most advantageous time to produce them, or after they are produced they wait for the homeowner or the developer, or whoever owns the property, to do something with the property. At this time there is a desire on the homeowner's part to do something about it and the State has the ability then to exert the upper hand. Usually the result is a decrease in the value of the property because of these matters that need to be settled. The fact that the homeowners or the property owners cannot now find out what the problems are is meaningful in that same statement.

The Tidelands problem in New Jersey is one that goes back to colonial times. It seems inconceivable to me that the State has not been able in the 200 years or so that we have been a nation to categorize its claim, and has not even in the last 10 or 12 years, since it was instructed by the Legislature, done so. The State has in the past made claims that, although they have been stricken down by the courts, have meaning. In 1974, for instance, the State attempted to claim 11,000 acres of Hackensack Meadowlands, which included virtually the entire town of Kearny, which had a population at that time of 37,000 people. Now, that claim was struck down by the courts. However, the same thing is occurring here

in Atlantic City, or someplace else. In that case the matter was stricken, but there was considerable effort made in order to do that. The individual property-owner, on an individual basis, cannot afford the type of proofs that it would take to defeat the State claim.

I was involved as an expert witness in the borough case in East Rutherford in which the State claim was shown to be inferior to the mean high water line actually surveyed by myself, acting for the Borough of East Rutherford. However, that suit cost, I believe, something in excess of \$350,000 to defend. Now, the Borough of East Rutherford had several hundreds of acres inside the Sports and Exposition Authority Complex and therefore could afford that cost. But, I submit to you that the normal property owner could not defend himself against the State of New Jersey in these matters. That is why I support, wholeheartedly, the Concurrent Resolution 3037, and why I will work towards having that approved by the voters.

I do not believe that 3037 is the total answer. I do not believe it goes far enough. I believe that some method must be legislated whereby any person with a claim on his property can in fact follow some reasonable course in order to have that claim settled. This would include all properties, including those that are as yet undeveloped or unfilled.

The matter in Atlantic City, as I am aware of it - and I have done some study on it - results from a gap or a gore in the mean high water line shown on a map when the State made its grant, and one that was developed subsequently from an earlier time. I submit to you that the State can go back as far as they can get maps, to 1664, the dinosaur age, if they can find a Stone Age map and in fact show that there was a gap. However, I do not believe that these things can be proven in a court of law. I am not an attorney, but I do have experience with real estate law as a surveyor, and it is very basic that the intent of the conveyance is what controls. For instance, if a surveyor calls a distance of 300 feet to a known monument and it is 310 actually, the monument is the controlling feature -- the intent of the conveyance. The intent of these conveyances in Atlantic City was to convey the State's riparian interests from the mean high water line, wherever it was, to some point off shore.

I think that is all I would like to say on this matter at this time. I would be more than happy to answer any questions.

ASSEMBLYMAN GORMLEY: Some excellent points were brought up. Jim has already sent a very effective letter into the Bergen Record, which was published. I look forward to your support through the next three or four months.

MR. WEIDENER: Thank you.

ASSEMBLYMAN MATTHEWS: Just some closing comments about the controversy concerning the whereabouts of Mr. Yunghans. As of yesterday there was communication with my office saying that Mr. Yunghans would be here. What happened between yesterday afternoon and this morning I don't know, but I will try and find out. I am not satisfied personally with what Donald Graham or Judith Yaskin had to say. I still think it is very confusing. I think that 13 years is certainly enough time. I am surprised that the Attorney General's office was not aware of the content of the law - Chapter 404 - covering the Hackensack Meadowlands. We do have a copy of it which says very specifically that the Hackensack Meadowlands should be done first. I think it says first, but the rest of the State should be done.

I myself would like to look for other remedies -- one legislative remedy and one legal remedy. One idea that I had so far today is that there has to

be established fair market value. You can't just say fair market value at the time of acquisition by the State because that is just unknown and it doesn't even make good sense. Unfortunately, with this kind of legislation others will argue that it is going to cost the State money, just like they are going to argue against a constitutional amendment, saying you are depriving all the school children of money and make it an emotional appeal that way, forgetting the rights of the people.

So, I haven't determined yet if there are going to be more hearings. I want to look at the testimony because some of the answers were not direct. They were lengthy answers and did not really get to the point. But, we will determine if there are going to be more hearings, who should be at these hearings, and should we try and get subpoena power to have certain people here. We cannot, as a committee, now get subpoena power because the Legislature is in recess and that subpoena power can only be granted by the Legislature. It would have to be done when we go back into session again in September.

As Mr. LaDrew brought up to me years ago - and he still has the same dilemma he had before - there is the problem where he can't sell his property and he must pay taxes on it, and he just can't do anything with it. This is just not fair. I do not think that is the intent of our State to do things like this. So, we will keep people informed as to what is going to happen. We will send copies of testimony to everyone who testified today. We will have copies available through my office, through Bill's office, and through Norm's office in Trenton, so if anyone wants copies of the testimony we will make them available.

Bill?

ASSEMBLYMAN GORMLEY: I think that the hearing today, and the frustration we had in trying to get answers, only demonstrates even more clearly what the homeowner or the private property owner, whoever that person might be, would have to experience. We sought to get answers, and I think we did get some answers. It was hard to get them, but some definite points were brought out. One is that they could have had a large portion of the necessary mapping completed and it was not subject to the Newark case. That is a fact. That is a part of a transcript. They shrugged it off with: "Well, we just forgot it and now we will start." This is a decade later.

In addition to that, they have indicated that this mapping procedure is not final within the law. If there is a constitutional right of the State, no matter what they do with the map unless a specific grant be given for property, or ground, a later mapping procedure could supercede or take away from someone that individual property. You need the finalization of a constitutional amendment.

Deputy Yaskin indicated that she could concede the need for an amendment of that nature but not the amendment I have introduced. She could concede the need for an amendment to protect homeowners but not the amendment I have introduced. I submit to you that they have known my intent on this long before the constitutional amendment was itself put in. The Attorney General's office, the Governor's Counsel's office, and the Department of Environmental Protection knew it. If they wanted to submit a constitutional amendment that incorporated those two aspects, which are 99% of what I submitted, I would have been more than happy to review and to accept a compromise incorporating such a procedure. But, it seems as though, as with the mapping, they are procedurally offering something that cannot be done prior to introduction on the ballot in November.

I submit that all the goals that they specifically enumerated are embodied in the constitutional amendment and I am very glad we had the hearing because it continued to verify the reasons why the legislators from Atlantic County introduced it. I think it is important to note that finally the Deputy Attorney General of the State of New Jersey said the laws will be applied equally. And, if your ground, whether it be commercial, residential, or whatever, does not have title insurance or, as Jim pointed out, the amount of title insurance needed to cover your entire property in order to cover the value, they are going to go against whomever it might be, no matter if you are a casino, no matter if you are John Doe, or no matter if you are Mary Doe. They feel that they are under a constitutional mandate to go after you and they have to get the fair market value today and it is not limited to the nature of the individual, and they conceded that today. They endorsed the constitutional amendment despite the facts they brought out.

ASSEMBLYMAN MATTHEWS: Thank you. The hearing is adjourned.





Handwritten notes: "11/29" and "P. 11/29"

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
TRENTON

DIVISION OF COASTAL RESOURCES
DIVISION OF MARINE SERVICES

November 27, 1979

PLEASE ADDRESS REPLY TO:
P. O. BOX 1689
TRENTON, N. J. 08625

Loveland, Garfett & Russell
Attorneys at Law
801 Asbury Avenue
Box 510
Ocean City, NJ 08226

Attention: John G. Himmelberger, Jr.

RE: Inquiry concerning the tidelands status of
Lot 45.02, Block 1, City of Linwood, Atlantic
County, New Jersey

FILE: #0114-71-07

Dear Mr. Himmelberger:

This is in further reference to the above matter concerning the State's claim of ownership to a portion of the subject property. Be advised that I have re-examined the question regarding the extent of the State's claim of ownership in the subject property and in particular that portion already filled. The re-examination was based on the submission of plans prepared by G.E. Schilling and Associates and filed with this office as follows:

- (1) Sketch Plat with elevations of a portion of the subject property filed on August 17, 1979 and
- (2) Map of Property showing elevations dated revised July 16, 1979 and filed on July 18, 1979.

The above referenced plans appear to show the surveyor's contention that the elevation of the former meadow, which is now filled, was in 1971 above the elevation of mean high water. The date of 1971 is when the filling occurred. The plans further show that portions of the existing unfilled meadow lying within Mr. LaDrew's property and contiguous to the filled area are presently below the elevation of mean high water. These plans do not show all of the subject property, known as Lot 45.02, Block 1, but only reflect property conditions in and around the filled, former meadow, portion of the subject tract.

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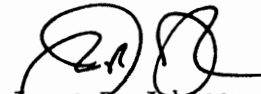
November 27, 1979

Based on this additional information and a re-analysis of available data dealing with the State's riparian or tidelands interest it is my opinion, at this time, that the State will not assert a riparian or tidelands claim of ownership in that portion of the subject property presently filled and above the elevation of mean high water.

Please note that this response must be considered unofficial and could be modified if additional data becomes available during the preparation of a tidelands map, required under N.J.S.A. 13:1B - 13.2 et. seq., of the area in question. The Natural Resource Council ~~has~~ adopted an index to lands which are subject to investigation for areas now or formerly below mean high water. The area of your interest identified in the attached index as "Patcong Creek East, panel #182-2022" (Index sheet number 18) is an area subjected to the systematic and comprehensive analysis for the delineating of areas now or formerly below mean high water. Such a map is targeted for completion on or before August of 1980.

Be further advised that tidelands grant or waterfront development permit (N.J.S.A. 12:5-3) will not be required for any further development of the filled portion of the subject property landward of the present mean high water line. Any development contemplated on or waterward of the line of mean high tide will require, prior to the commencement of such activity, the procurement of the required tidelands grant, lease of license and waterfront development permit.

Very truly yours,


James R. Johnson, Chief
Bureau of Tidelands

JRJ/ja

cc: Lloyd, Megargee, Steedle, Youngblood & Franklin

Attn: Joseph L Youngblood, Jr.

bcc: Assemblyman Michael Matthews ✓

Note here he says on or
before 1980



14

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
TRENTON

DIVISION OF MARINE SERVICES

PLEASE ADDRESS REPLY TO:
P. O. BOX 1889
TRENTON, N. J. 08625

February 2, 1979

Mr. Joseph L. Youngblood, Jr.
600 Fire Road
P.O. Box 850
Pleasantville, New Jersey 08232

RE: LaDrew; Your File N6959-Y;
Our File 0114-71-07

Dear Mr. Youngblood:

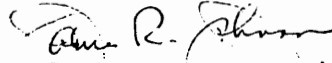
In response to your letter of January 24, be advised that we did meet with Mr. LaDrew and others this past Tuesday in order to clarify our position and requirements concerning development of the property in question. There was no change in the State's position regarding its basic ownership claim to any lands now or formerly flowed by mean high tide. However, it was pointed out that the presently conceived ultimate in defining such lands was a State-wide mapping program which is far from complete. Therefore, while it is possible that we cannot as of now precisely quantify the extent of our claim to the LaDrew tract, we feel fairly certain that it is substantial.

In any case the cloud on the title will remain until a conveyance is made by the State and the Natural Resource Council (the body which initially considers such applications) will not consider a quitclaim until the mapping project is completed. So as a practical matter the only expeditions approach in the LaDrew case is for an application to be made to purchase at fair market value (without reservations) all that area which we presently feel we can reasonably claim.

From the discussion at the meeting it is our understanding that such an application is going to be filed by the LaDrew estate or the prospective developer along with applications for riparian and/or Wetlands permits to cover all past and planned development at the site. And we should stress at this point that applications are not prejudged by this Division and there is no obligation on the part of the State to approve such applications.

If we can be of further help to you in this matter, feel free to call.

Very truly yours,



James R. Johnson, Supervisor
Office of Riparian Lands
Management

JRJ/DAH/rk