MEETING

STATE OF CALIFORNIA

STATE LANDS COMMISSION

STATE CAPITOL

ROOM 126

SACRAMENTO, CALIFORNIA

MONDAY, JULY 19, 1993

2:30 P.M.

PETERS SHORTHAND REPORTING CORPORATION
3336 BRADSHAW ROAD, SUITE 240, SACRAMENTO, CA 95827 / (916) 362-2345
COMMISSIONERS IN ATTENDANCE

Leo McCarthy, Lieutenant Governor, Chairman
Gray Davis, State Controller
Steve Kolodney, Commission-Alternate for Thomas Hayes, Director of Finance
Stan Stancell, Commission-Alternate for Thomas Hayes, Director of Finance

SPEAKERS

John F. Foran, Lechuza Villas West
Sherman L. Stacey, Attorney, Lechuza Villas West
David C. Weiss, Civil Engineer, Lechuza Villas West
Robert H. Philibosian, Attorney, Save Lechuza Beach Committee
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PROCEEDINGS

CHAIRMAN McCARTHY: Good afternoon, ladies and gentlemen. This is a meeting of the State Lands Commission. On my right, Commissioner Gray Davis. On my left, Commissioner Steve Kolodney.

We have a consent calendar. I see that Mr. Brent Thrams was here on Consent Item Number 5. We intended to take those later so we could get to the one issue that will require more time, Item 59. I don't anticipate any difficulties on Consent Item Number 5.

Mr. Thrams, if you wish to stay with us for however long Item 59 takes you're certainly welcome. That may, you know, take some time.

(Inaudible comments.)

CHAIRMAN McCARTHY: It's hard to say, but I think we're going to give it good time. It's an important issue. So an hour at least.

MALE VOICE: Mr. Chairman, pardon me for interrupting. All items other than Item 59 are in consent calendar. I understand that Mr. Thrams is here only to support the consent recommendation on Item 5.

CHAIRMAN McCARTHY: Yeah. He indicated that on the witness application. He's here to answer questions if necessary.

(Inaudible comments.)
CHAIRMAN McCARTHY: All right. Well, then we can
act on the consent file now, everything else is --

MALE VOICE: Before you act, Mr. Chairman, you
pull items 18, 34 and 41.

CHAIRMAN McCARTHY: Items 18, 34 and 41 are pulled
off the consent and then --

MALE VOICE: Regular calendar items 57 and 58 can
be added to the consent calendar.

CHAIRMAN McCARTHY: Any objection to adding 57 and
58 to the consent calendar?

If there is none, that action is taken. The
consent calendar's before the Commission.

Any objections from the public or members of the
Commission on acting on the consent calendar at this time?

If not, the consent calendar is adopted.

Previous Commission minutes are approved without
objection.

Any other matters to come up before we reach Item
59?

All right. We're on Item 59.

MALE VOICE: On that item, Mr. Chairman --

CHAIRMAN McCARTHY: Representing the applicant,
Mr. Sherman Stacey and Mr. John Foran. And we have as
another witness, I take it in some opposition, Mr. Robert
Philibosian.
Mr. Philibosian in -- yes. All right. Thank you.
All right. If I may suggest to the applicants, what is your preference? Would you like the State Lands Commission to present their case first or would you prefer to present your case first?

(Inaudible comments.)
CHAIRMAN McCARTHY: All right. Mr. Warren, would you proceed with our staff.

MR. WARREN: Mr. Chairman and members -- let me -- this is not an application as such. Perhaps a little background statement on the nature of the proceeding before you is in order, and for the record.

From time to time the State Lands Commission is asked to advise other agencies as to its views on questions of public ownership or other interest in property. This is the case with respect to this particular calendar item.

Mr. Stacey represents the applicant for a coastal permit on a beach in Malibu. Recently the Coastal Commission denied such permit for development. One of the Coastal Commission's considerations in making its denial was your staff's conclusion that there is substantial evidence that the proposed development would take place on state public trust lands. We have met three times with Mr. Stacey and his client, Normal Haney (ph.), about this matter, but nothing they have submitted has contravened the facts we
have available or the law we understand to be applicable.

The legal determination here was based on the established principal that the boundary supporting the state's public trust tidelands from the uplands is an ambulatory one consisting of the mean high tide line. It changes with the season and the condition of the beach, usually moving landward in the winter and seaward in the summer.

To help determine the facts of the project before you, we asked our own former chief boundary determination officer, Mr. Francois Uzez (ph.), to study the boundary issue. In addition we performed an on-site survey. On the basis of the review by Mr. Uzez, our and other on-site surveys and anecdotal photographic and other evidence, we advised the Coastal Commission that substantial evidence showed encroachment of the project on state tidelands.

Other forums are available to determine Mr. Stacey's objections to our decision. He has challenged the Coastal Commission's permit denial in an action now pending in superior court. Mr. Stacey could file a quiet title action if he desires additional certainty on the boundary issue. Staff believes the issue to be critical in its administration of sovereign lands. Consequently, we are not prepared to reconsider the advice we have already provided the Coastal Commission on this issue. To this position
Mr. Stacey takes exception and has requested an opportunity to address you. So I'd like to have him present his objections to you at this time.

CHAIRMAN McCARTHY: Mr. Foran, Mr. Stacey. Let's make room for them so they can sit together, please.

Would you like to sit on the same side of the table? We can move a chair over there.

MALE VOICE: Mr. Chairman, you might make note that we've been joined by Mr. Stancell.

(Asides.)

MR. FORAN: Mr. Chairman, members of the Commission --

CHAIRMAN McCARTHY: Welcome to the Commission.

MR. FORAN: It's the first time I've been in Sacramento.

CHAIRMAN McCARTHY: Yes. I thought it might be.

MR. FORAN: My name is John Foran and I'm representing the Lechuza Villas West in this matter, and we are going to make a presentation which will, I think, be somewhat different from my friend Charlie Warren's.

But basically, Mr. Chairman and members, we believe that this would represent a major policy change with respect to the title of tidelands in the State of California and its impact would go way beyond the property that's before you. It would have a statewide ramification, which
we will I believe establish as soon as we get to our particular point.

But let me just, by way of making the points that we believe will come out in this hearing, and that is that if you were to adopt the two proposals that the tideland goes to anywhere that the high water mark ever comes or the other issue, which is being the navigational one, but what you would have on a statewide basis, not just with respect to this property, but you would have a devaluation of the property, all beach property, coastal property, all up and down the State of California.

You would have a revenue loss in the -- literally in the hundreds of millions of dollars insofar as local property that is presently beach property would be devalued significantly thereby reducing property taxes. You can have your land revalued by virtue of Proposition 13.

In addition to this, with respect to any capital gains type of taxes or revenues to the state or even the federal government, but let's deal with the state, you would have a significant loss of revenue. We have estimated in the brief that has been presented by Mr. Stacey that the combined total of these revenue losses could be in the neighborhood of $200 million, and we can verify this or at least indicate how we arrived at that particular number.

The third point that I think should be considered
in the significance of the decision you would make if you were to adopt the staff recommendation as to how the property should be -- the property line should be determined, would be that you could very seriously be involved in a taking of property and subject to significant lawsuits, there would be a liability on the part of the state insofar as that would be the basis of the decision.

So on these basis we are suggesting that it is not an appropriate redefinition, at least we consider it a redefinition, and I'd like to have Mr. Stacey now begin with the specific points on the legal and then we can come back to the consequences at a later time if you wish to do so.

CHAIRMAN McCARTHY: Thank you, Mr. Foran.

Mr. Stacey.

MR. STACEY: Thank you, Mr. Foran.

Mr. Chairman, members of the Commission, my name is Sherman Stacey. I'm an attorney. I practice in Santa Monica, California. I have a considerable amount of experience in dealing with real property in the Malibu area where this property is located.

We have advanced the position and I have submitted to each of you a spiral bound notebook which was for a hearing originally scheduled for July 14th as well as two letters, one dated June 10th and one dated July 9th of this year. And basically what I wish to address and what I think
that we will be able to present to you is that the position that Mr. Warren has taken is indeed a departure from existing policies of the State Lands Commission, it is a departure which has major policy implications, and as he himself describes is critical to the administration of state lands. And those are the kind of issues that I think are most appropriately before you.

Mr. Warren has taken a position on two issues that claim that there are state interests in my client's property where he proposes to build some homes. He communicated this initially in a letter dated November 4, 1992 to Peter Douglas, the Executive Director of the California Coastal Commission. And the two interests that he asserts are, one, that some portion of the property where my client proposes to build are state tidelands, and, two, that beyond the bounds of the state tidelands there are navigational servitude that extend over those waters as the waters rush up over the beach above the ordinary high water mark which the construction of homes would interfere with.

I'm going to first trace what has been the manner in which the State Lands Commission has dealt with these issues because in advising the Coastal Commission this is certainly not the first occasion that the advice has been sought. So when I researched the matter in examining files with the Coastal Commission I found 82 letters lying between
February of 1978 and August of 1991 in which the State Lands Commission has communicated to the Coastal Commission whether or not a particular structure will or will not interfere with state tidelands.

And the manner in which the state has undertaken to do this is to look at their existing recorded survey maps, examine and compare them to the proposed construction drawings which are sent to them, and if no recorded survey shows an encroachment into state lands to communicate a letter to that effect to the Coastal Commission.

In none of these letters is there a single communication that beyond state tidelands there may exist some navigational servitude. In none of these letters is there any reference to any type of data or information other than the surveys, field surveys, which you have on file in your offices here in Sacramento. That has been the standard policy manner in which it is dealt with.

This case marks a departure, a departure in two ways. One, it marks a departure in that you utilize photographic interpretive evidence provided by Mr. Uzez who examined a series of photographs, approximately 31, and I'd like to pass the packet around to you. These are photographs taken from high elevation, many of which are at a scale of 1 inch equals 2,000 feet in which with my thumb I can cover the entire 1,000 feet of beach that my client
owns, and from observing these photographs and performing some calculations which he describes, Mr. Uzez purports to be able to identify where the line of mean high tide of the Pacific Ocean happens to be. Not by field survey, but by the examination of photographs.

And I'd just like it if members of the Commission could flip through and look at the dimension on those photographs, because we have one extra witness we'll present today, Mr. Davis Weiss, a civil engineer. We have very grave doubts that Mr. Uzez can reach the conclusions that he purports to reach.

The second information that Mr. Warren relied upon did not arise before his November 4, 1992 letter, it came subsequently, and that was field survey data which the Commission undertook to obtain during the storms of this year at a time when the beach was in an extraordinarily eroded or depleted state, at a time when indeed the sand had been removed from the beach rapidly due to storms, a condition commonly known as evulsion. And data we'll present to you today that as of today the beach has restored to where the line of mean high tide is the approximate location it was in the 1932 survey at the time this property was subdivided.

As to being a departure from existing policy, we think that it is a departure to rely on other than the
survey data you have. You have utilized photographic
evidence in cases in the past where because of unnatural
accretion arising from the construction of man-made
facilities, you can no longer go out and survey where the
line of mean high tide may have been at the last time a
beach was in its original unaffected condition. Therefore
photographic information may be the only source you can have
to approximate where the tideland boundary might have been
in order to reach tideland resolutions on cases involving
artificial accretion.

But where you have the capacity to actually
physically survey a property because it remains subject to
the natural forces, there is no reason to utilize
interpretive evidence based upon very, very long range
photographs in which the interpreter must estimate the time
of day in which the photograph took place in order to try to
estimate the location at which the line of mean high tide
may be.

And, second, that your agency now asserts that the
area of state tidelands extends even when major storms erode
a beach away rapidly and that beach restores rapidly after
the erosion, that that is a change in beach condition
commonly known as evulsion, which the law is clear does not
change the location of the ordinary high water mark.

If I might take a moment to orient you, there were
some photographs in the package that you have. However, I
think perhaps utilizing the photographs to illustrate the
location would be of some assistance. What we have here is
an area subdivided in 1932 for single family residential
development. There are a number of homes constructed in the
area up on Easterman Beach and my client owns (inaudible)
shaded area (inaudible) over to the edge (inaudible)
distance of approximately 1,000 feet.

In this area the state now claims that the line of
mean high tide, not always, but from time to time it may
intrude beyond this what is called string line boundary.
String line is an administrative term used by the Coastal
Commission as their way of establishing a maximum
(inaudible) you can build out from a beach. And so my
client had proposed to build homes close to that string
line, and in their effort to provide permits the Coastal
Commission (inaudible) evidence that was supplied to Mr.
Foran.

Mr. Uzez I don't think was hired by the State
Lands Commission to examine the issue, but rather the
Attorney General's Office employed him in connection with
events of prior litigation, that was the developer's
(inaudible).

But utilizing either the photograph determination
or the survey of the severely eroded condition would be a
major change from policy even if you accepted the idea that
state policy allows the tide line to move seasonally, which
I think is not consistent with the law of the State of
California.

Rather, the ordinary high water mark, the boundary
between uplands and tidelands defined in Section 830 of the
Civil Code, is a much more stable boundary than one that may
fluctuate as much as 50 or 60 feet every year. It is
indeed, and ought to be, the average among the boundaries in
that area. That is, you look at where it might be normally
in the winter, you look at where it may be normally in the
summer, and you have an average between those two that
establishes the ordinary high water mark.

I think that is supported by what is the present
case that is the only case on the issue in California,
People versus William Kent Estate Company decided by the
Court of Appeals in 1966, which provided that when a beach
is wider in summer than in winter and if these changes are
regular, they can hardly be gradual and imperceptible and
cannot meet the definition of natural accretion and
(indiscernible) and directs the trial court to figure out an
average between them.

I think that all of the evidence here, even if you
accept the photographic interpretations, are that this beach
does exactly that; it's bigger in the summer, it gets
smaller in the winter. And there are numerous survey tide
tlines identified in this beach area. In fact, we went out
and surveyed yesterday the tide line. This is the tide line
that in February of this year, five months ago, your staff
surveyed and found encroachments beyond the string line.
Yesterday this orange line depicts where that tide line is
now located.

Over the months since the major storms of the
earlier part of this year, the sand has rebuilt upon the
beach and the boundary (inaudible) boundary moves has not
only eroded rapidly but has built up rapidly again. I don't
think that's a way for the people of the State of California
to be able to define the boundary between their land and the
tideland. I think they are entitled and the law gives them
a more stable boundary, one that changes by small and
imperceptible degrees.

Now, Mr. Warren in a letter to me of March 25th of
this year criticized my reliance on the Kent Estate Company
case, and I recognize that the court decided a decision last
year in a case called Antoine versus Coastal Commission
where they accepted the argument that Mr. Warren advances to
you today. However, the California Supreme Court ordered
that decision to be unpublished and removed it as a case
that could be cited as a controlling case before the State
of California. So the Kent Estate Company case is indeed
the only case we have controlling.

And the staff can attempt to distinguish it or shrug it off and act as though it doesn't exist, but there is no other case.

But he criticizes it on the grounds that he finds it inconsistent with prior California Supreme Court cases from the teens and the twenties. The principal one of which is Strand Improvement Company versus Long Beach. Strand Improvement Company again concluded that to change the boundary between the tideland and the upland, that the changes must be little by little, by small and imperceptible degrees.

And I would submit to you that when in the winter of this year this beach eroded 50 to 60 feet in a few days, that those were not changes by little by little or by small and imperceptible degrees, and therefore a survey conducted after all of that evulsion had taken place cannot define the boundary in the public's lands and the tidelands.

Beyond this I think you need to understand this concept of navigational servitude. The theory Mr. Warren advances is that when waves crash upon the shore, and if you've ever observed the beach, which I'm sure you have, the water rushes up along the sand and then recedes. That while the water is rushing up the sand and then recedes it is navigable because you can launch catamarans and kayaks
through that water. And for those few seconds, because it is navigable, the property that is beneath that rushing and receding wave has a navigational servitude that the people of the State of California can prevent my client from building a house and interfering with.

And he relies for this upon two cases which I can find little basis to rely upon. The first of these is Bone versus Albertson from 1951 in which a farmer's tract of land became flooded in 1938 and it was still flooded in 1947, and the court found that having been flooded that long and having been navigable over those flood waters that indeed a navigational servitude existed.

And he says we should apply that when the water is flooded twice a day at high tides for periods that usually range five to six seconds in their cycles and frequency because the frequency of waves is generally once every 13 seconds; they crash upon the beach, they recede, and when the waters recede it's not navigable anymore because your boat plops down upon the sand. But he asks the State of California as a policy position to determine that a navigational servitude applies in those areas.

The second case is the case of Baker versus Mack. And in Baker versus Mack there was a navigable stream which the landowner argued couldn't be found navigable unless it could be used for commerce. But the findings of fact in
that case were very clear, that the width of the stream was 107 to 292 feet wide and its depth varies from 2.7 feet to 17 feet in depth. That seems reasonably navigable to me. That does not justify applying navigability simply because a catamaran or kayak may launch into the surf on water that will range between two and eight inches in depth and which will only exist at that depth for a few seconds before it recedes back down the sand and joins the sea and then is replaced by the next wave.

So I think clearly that being that in these 82 letters previously issued, some of which identify development which is at the line of mean high tide -- now, if I build a house that comes right out to the line of mean high tide what happens when a wave breaks and rushes up on the beach? It's going to go into his navigational servitude. Yet in not one of those 82 letters was there ever a mention over 13 years of the existence of such a navigational servitude. There I think these have become departures from the policies that this Commission has applied in the past.

I have a further difficulty which is the subject of my July 9th letter because I find that the Commission's staff is now not even applying those same policies on people who come after my client, on people who are on the same beach as my client.
On this beach there's another problem on which your office has recently sent a letter. On May 21st of 1993 they sent a letter concerning a house which is on this parcel marked H (inaudible) the same beach. However, they declined to assert that state tidelands might be involved here. They declined to assert that because Mr. Uzez went out and interpreted his photographs (inaudible) surveys were done, and they only showed in one photograph that there might be some encroachment on that property by state title.

Now, I'm not sure that that's in fact going to be the case every year because this beach, as Mr. Weiss will indicate to you, tends to erode fairly uniformly. But what's surprising about the May 21, 1993 letter is that the navigational servitude disappeared. It's not even mentioned. Indeed, when I look at Mr. Uzez' study that he submitted, which forms the basis for the opinion, if I look at the study he prepared for my client, Lechuza Villas West, the title of it on the front page in big print reads "Report on Locations of Mean High Tide Lines and Landward Limits of Wave Uprush."

Well, that landward limits of wave uprush, that's the navigational servitude concept. But when it comes to preparing the report on the Bachman (ph.) property, a report that the State Coastal Commission has no real interest in denying a permit on, when it comes to that report, Mr. Uzez'
report is entitled "Report on Locations of High Tide Lines."
What happened to landward wave uprush?

And in Mr. Trout's letter with regard to the Bachman property where he does not assert a navigational servitude, he is silent. Suddenly this policy which is used to deny my client his ability to make use of his property because it will interfere with important constitutionally guaranteed public rights doesn't exist for a house 600 feet away on the same beach subject to the same surf, subject to that same advancing (inaudible). I don't understand that. The policies that were applied before to hundreds of people who built houses on the beach are not going to apply to my client, and then after, they continue not to be applied.

This is a matter of I think some grave import in that if you've ever visited the Malibu area and many other areas of the state, there are numerous structures built out along the shoreline on what are generally called wet beaches. These are beach locations where the water rushes regularly up underneath the houses. And one thing I would note in these 82 letters that I found in the Coastal Commission files and signed on behalf of this Commission, a great number of them are for sea walls or revetments.

Now, what's the purpose of a sea wall or revetment? Its sole purpose it to block the water that advances up the beach. Block water that would be navigable
and subject to the navigational servitude. Yet this agency regularly and routinely approves sea walls if it finds, looking at its survey maps, that the line of mean high tide is not affected.

In the notebook that I distributed to you there are a number of photographs in Exhibit D showing numerous beach locations where houses are built on caissons over the beach designed for the water to go beneath those houses. If this is the policy of the State of California, the vast majority, if not all of those houses, are either on state tidelands or are subject to the navigational servitude. Those people's tidelands all become affected by what I consider a severe departure in policy by this Commission in asserting claims on property it has not asserted claims upon in the past.

What we are looking for is the opportunity for this decision not to be made by your Executive Director because it is of such -- but for the decision in fact to be made by you. You are the ones who under statute govern the tidelands of the State of California. And I don't think that Mr. Warren can expand those tidelands simply by asserting that the definition by which we determine the boundary is different than case law and tradition holds it to be.

One other chart that I will show you (inaudible)
why you should ask that an ordinary high water mark not be (inaudible) this drawing is one (inaudible) in which he identified between these two widest dark lines on the survey of (inaudible) location where 90 percent of all of the mean high tide lines that were surveyed fall in that zone. They are (inaudible).

And when you're asked to determine what the State of California will assert the ordinary high water mark to be, I ask you to look and say as an average person what seems ordinary? Does it seem ordinary that after severe storms we go out and survey and say, "That's the ordinary high water mark"? Is the condition of the beach at that time ordinary or is it extraordinary? And ought we not follow the law of California and fall somewhere between a seaward (inaudible) average, statistical average that my client does not interfere with in any manner whatsoever in the construction of his house.

He seeks to do no more than what thousands of other citizens in California have done, be able to make reasonable use of his own property in a location where it is appropriate to do so.

I'd like to (inaudible) Mr. Weiss, a civil engineer, has 30 years of experience in dealing with this area.

You can take my chair. And --
CHAIRMAN McCarthy: It's all right. He can sit over here if he likes.

Would you like to come around this side, Mr. Weiss? And if you'd just switch that microphone around you can use that. Thank you.

MR. WEISS: Yes. Thank you, gentlemen. My name is David Weiss. I am a licensed civil and structural engineer in the State of California. I have 30 years of experience in studying and observing the natural wave and shoreline processes in the area of Malibu. In that 30 years I have performed and my office has been responsible for performing almost 300 wave uprush studies, 20 of which have been done along Lechuza Beach. As a result of this experience I feel I can make the following statements.

First of all, Lechuza Beach is a pocket beach situated between two rock outcroppings on its east and west edges. Second of all, waves attack this beach on a fairly perpendicular direction from the ocean. As a result, the beach scours during a storm on a pretty uniform basis. There are times when the waves would approach the beach from a slight angle where one end of the beach may accrete or scour a little more than the other and then vice versa in other storms, but by and large over a period of time any accretion or scouring of this beach is pretty uniform and pretty even.
As a result, there is no reason to allow homes to be built on one end of the beach and state they are beyond the mean high tide -- or they are landward of a mean high tide line and not to be built on another end -- the other end of the beach.

Over the years there has been very little permanent change in the location of the mean high tide line. Other than on very rare occasions when the beach scours dramatically as a result of a very erosive storm, the mean high tide line pretty well meanders around the location of the 1932 tract line.

From my experience, the location of the mean high tide line has always been established by three-dimensional field surveys, that means getting a man out there with a survey -- with a transit and a measuring tape and a range pole. In a report prepared for the state by Mr. Uzez, he used a method of trying to establish the location of the mean high tide lines of observing some historical data. He used a series of historical photographs. In my mind this process has done nothing more than to establish what we've always said, that the mean high tide line on these beaches oscillate.

But he cannot -- I do not feel he can use this process to establish a property line because there are too many variables and too many unknowns.
First of all, the scale of the photographs used vary from 1 in 200 to 1 in 2,000. When somebody is trying to predict or make a statement, "Well, the mean high tide line meandered over a certain string line by a distance of 5 or 15 feet," he's trying to identify a swath on a photograph somewhere between 200ths and 2000ths of an inch wide.

Second of all, in order to establish the elevation of the water surface one must know the time of day, consult an almanac and know what the height of the water of the tide was at that given hour. The photographs used for the most part had no times on them, as a result Mr. Uzez had to use a sun dial theory. In other words, he had to take a look at some shadows on the photograph and say, "Well, it must be three o'clock," and therefore he established the time of day in his mind and he said -- and he established the height of the water. This is very, very inaccurate.

Third, Mr. Uzez made an assumption that the waterline intersects the beach -- or the still waterline intersects the beach at a distance of approximately halfway up the, quotation mark, "wet line." Mr. Uzez established the wet line on his photographs by using the line of the debris on the beach and the line or the location of the water or the waves.

First of all, the debris line of the beach could be days old and has nothing to do particularly with where
the waterline is on that particular day or a given day. Second of all, Mr. Uzez cannot establish where the actual washback line of the wave is. All he sees in the photograph is the water is somewhere on the photograph and he doesn't know if it is washing up the beach or washing back toward the ocean. As a result of this, I say that Mr. Uzez cannot necessarily define -- or can't define the location of the mean high tide line.

Finally, at the Lechuza Villas project, the mean high tide line will rarely encroach beyond the project string line. Observation shows that the occurrences that this has happened would be -- has been maybe one or two percent of the time, and of the times this has occurred it has been as a result of a phenomenal occurrence such as a storm or as Mr. Stacey has used the word evulsion. This is a very swift movement of the sand and a very swift movement of the tidal line and is not slow and imperceptible, and boundary lines are usually established by slow and imperceptible movements.

Thank you very much.

CHAIRMAN McCARTHY: May I ask a question?
Did I understand you correctly to say that over the years the mean high tide line can be pretty consistently fixed according to the surveys that exist?

MR. WEISS: According to our information, the mean
high tide line on this beach has pretty consistently been
around the location of the 1932 tract line.

CHAIRMAN McCARTHY: Would you give me the dates of
the surveys that you used to come to that conclusion?

MR. WEISS: We are using surveys that were taken
in July of 1932, August of 1951, we have a survey from 1957,
1960 --

CHAIRMAN McCARTHY: What months are those?

MR. WEISS: We don't have the months on here.

CHAIRMAN McCARTHY: 19 -- what are those --

MR. WEISS: 51.

CHAIRMAN McCARTHY: Yeah.

MR. WEISS: I'm sorry --

CHAIRMAN McCARTHY: August '51.

MR. WEISS: August '51, 1957 --

CHAIRMAN McCARTHY: Right.

MR. WEISS: -- 1966, 1970, 1972, April of 1990,
September of 1992, and then of course the survey that was
taken just yesterday.

CHAIRMAN McCARTHY: Are there any winter surveys
in the group that you relied upon?

MR. WEISS: The 1950 -- there may be some in the
1957 through '72 surveys. The April 1990 survey would be
considered a winter survey.

CHAIRMAN McCARTHY: Why would that be defined as a
winter survey?

MR. WEISS: We usually consider the winter months of the storm seasons between November and April.

CHAIRMAN McCARTHY: Any questions?

Thanks.

MR. WEISS: Thank you, gentlemen.

CHAIRMAN McCARTHY: Mr. Stacey, let me ask a question. You've appeared before the State Coastal Commission on this matter.

MR. STACEY: Yes.

CHAIRMAN McCARTHY: All right. More than once?

MR. STACEY: Yes.

CHAIRMAN McCARTHY: And their decision?

MR. STACEY: Their decision was to deny based upon the findings that the construction of the structures would interfere with state tidelands and a navigational servitude. They made some additional findings of environmental issues.

CHAIRMAN McCARTHY: Mr. Warren's letter affected the last decision, the last two decisions? I don't know the dates of the Coastal Commission hearings. Incidentally, how many times have you been before the Coastal Commission on this issue?

MR. STACEY: Four.

CHAIRMAN McCARTHY: All right. Mr. Warren's letter came at what point in that sequence?
MR. STACEY: It came at the end of the sequence in response, in my view, to the decision of the United States Supreme Court in *Lucas versus South Carolina Coastal Council* where the Supreme Court stated that to prevent use of property you must find that either the use would constitute a public nuisance or that the owner does not have sufficient title to proceed with the use. And I believe it goes to the latter of those two issues.

CHAIRMAN McCARTHY: So I understand your perspective on this, are you indicating that the State Coastal Commission would not have reached this decision on other grounds and the last decision but for Mr. Warren's letter?

MR. STACEY: I do not believe there would have been any justifiable grounds for the Commission to have made a decision. But indeed they did make other findings about the impact of the construction of residences, and I've represented probably 200 people in the past 20 years before the Coastal Commission, and I could find no impact these residences would cause that is not caused by every shorefront residence that is built in the Malibu area. The only difference being that this is a relatively open unbuilt beach area where other areas by the time the Coastal Commission came along already had a number of houses.

CHAIRMAN McCARTHY: So for three occasions the
California Coastal Commission rejected your application on behalf of your client on other grounds and on the final occasion there were independent -- other independent grounds plus Mr. Warren's letter that you believe played a role in their decision?

MR. STACEY: I believe absent the assertion of a tidal interest by the state, that the Commission would not have denied the permit.

CHAIRMAN McCARTHY: In their fourth denial?

MR. STACEY: Yes.

CHAIRMAN McCARTHY: I welcome Commissioner Stancell. The Department of Finance is sort of running in -- each one's going to cover three innings of this.

(Tape change.)

CHAIRMAN McCARTHY: -- assessment done for the Lands Commission. But you're aware of the survey that they took in February, Mr. --

(Inaudible comments.)

CHAIRMAN McCARTHY: All right.

MR. STACEY: Yes.

CHAIRMAN McCARTHY: Which found what, Mr. Hight?

EXECUTIVE OFFICER HIGHT: The placement of the mean high tide line on that date (inaudible).

CHAIRMAN McCARTHY: Now, a survey's a more traditional way of determining -- right.
Do you quarrel with that particular survey, the
legitimacy of that survey?

MR. STACEY: No. We don't quarrel with the
survey, we quarrel with utilizing a survey at a time of
severe storm activity to establish a property boundary.
Certainly it establishes where the mean high tide intersects
the shoreline on the beach. But I don't believe that the
law will support the proposition that that means that when
that beach eroded those lands changed from being private
lands to public lands.

CHAIRMAN McCARTHY: But isn't the legal definition
of the state's property, you know, the mean high tide line,
at any point during the calendar year?

MR. STACEY: I believe the definition in the Civil
Code is the ordinary high water mark. Now, I don't think
that means the mean high tide line wherever it might exist
through the year. That was the argument the state made in
the Candice State case and it was rejected, affirmatively
rejected by the court that the erosion on a beach that
arises in a regular annual fashion, that may be as much as
80 feet a year, and if you observe the distance of that line
that's pretty much on the order we're talking about here,
that kind of erosion and accretion is not such that it
is little by little and by imperceptible degrees and
therefore changes the boundary.
CHAIRMAN McCARTHY: This is the yardstick in the 1966 case?


CHAIRMAN McCARTHY: So you take the position that since the Court of Appeals case was unpublished that the courts have not changed their definition of what the mean high tide line is?

MR. STACEY: For whatever reasons, the California Supreme Court decided that that opinion should not become the law of the State of California. I can't crystal-ball the reasons, I can only say Antoine is not the law.

CHAIRMAN McCARTHY: Do we have any -- do our legal counsel have any views on that?

DEPUTY ATTORNEY GENERAL STEVENS: Yes.

(Inaudible) basically we believe that the lines that (inaudible) ambulatory (inaudible). This had been discussed (inaudible). The Antoine case (inaudible) pointed out that this determination of this ambulatory (inaudible) actually has some advantages for the private owner as well.

(Inaudible).

And there's one other point (inaudible) surveys (inaudible) all occurred (inaudible). This is the ambulatory line (inaudible) must be considered (inaudible) change in the Lechuza Beach is characterized as being (inaudible) of 100 year storm (inaudible) nature and the
wave action (inaudible). The public resources code (inaudible) where a beach is changed by artificial means (inaudible) fixed. And I think this (inaudible).

CHAIRMAN McCARTHY: Mr. Stancell -- Commissioner Stancell.

COMMISSIONER STANCELL: Mr. Stevens, it was asserted by Mr. Stacey that there's a major departure from what you just said in terms of how the boundaries were determined in this case. Is he correct in that assertion?

DEPUTY ATTORNEY GENERAL STEVENS: I'd like (inaudible) the boundary's always the big (inaudible). I have seen correspondence dated at least back to the early eighties which describes this land (inaudible).

COMMISSIONER STANCELL: Are we applying something differently now?

MR. STACEY: No.

DEPUTY ATTORNEY GENERAL STEVENS: No.

COMMISSIONER STANCELL: Then I'm not sure I understand where the departure is taking place from a current policy.

MR. STACEY: We find no departure from existing past policy.

DEPUTY ATTORNEY GENERAL STEVENS: I think perhaps Mr. Stacey may be suggesting (inaudible). I'd like to mention that Mr. Stacey mentioned there was 82 some letters
that he has of State Lands Commission communicating to the
Coastal Commission regarding developments along the beach.
We have over a dozen letters relating to this stretch of
beach between 1978 and 1990 or -- excuse me, yes, 1990, in
which the Commission specifically did make those same kind
of statements.

But what he failed to read to you was that each
one of those letters also points out that it's based upon
the available evidence that the Commission and this office
has not made a final determination of the boundary, that we
reserve the right to assert an interest at a later date, and
if in fact a structure's been built to require a lease and
that -- and so forth. So in each one of those letters to
Mr. Stacey's client or his predecessors or the real estate
agents who were contacting our office about this property,
they were informed that that was certainly a possibility.

There is also correspondence with the Coastal
Commission where they asked us and we told them we didn't
have sufficient evidence -- reliable sufficient evidence at
that time and it was only after that evidence came in that
we did object. We still lack that evidence on the Bachman
residence and so the staff was -- did not feel that it was
appropriate to object to a piece of property where there was
insubstantial evidence.

CHAIRMAN McCarthy: Mr. Warren.
MR. WARREN: Mr. Chairman, Commissioners, for your information, I've gone over most of the 82 some letters that Mr. Stacey referred to in his opening, and substantially they are the same, and I'd like just to read you -- it's a standard reply.

It says, "Based on" -- this is to applicants and agencies and so forth,

"Based on the information you provided and an analysis of our in-house records and maps, the proposed residence appears to be located landward of those surveyed mean high tide lines known to us at this time. Therefore we will not require a lease or permit.

"You should be aware, however, that this office has not made a final determination of the state's boundary at this location. Therefore we reserve the right to require a lease or permit at some time in the future should it be determined that state land is involved.

"This letter is not intended nor should it be construed as a waiver of any right, title or interest of the State of California in any lands under
its jurisdiction."

That is typical of the 82 letters provided and
accurately reflects the position of this agency. When we
receive inquiries such as the one posed to us by the Coastal
Commission we look at the available information on the
particular site. Depending on its relevance and its
substance we then make a determination of mean high tide
line, and that's exactly what we did in this instance.

Back in 1981, for example, we received an inquiry
concerning this very site. This inquiry was from -- oh, I
think it was a real estate agent, and raising questions
about this Lechuza Villa -- this stretch of what was then
referred to I think it is Ensenel Beach.

MALE VOICE: Um-hmm. Tract 10630.

MR. WARREN: Tract 10630. In that letter in 1981
we advised the person interested in the site,

"That Section 6357 of the Public
Resources Code provides authority to
this body to establish the ordinary high
water mark of defined wetlands under its
jurisdiction. The courts have held that
under natural conditions the location of
the ordinary high water mark is an
ambulatory line changing from day to day
depending upon the available sand supply
and other factors. Therefore a
determination of the ordinary high water
mark in such circumstances is valid only
for the instance it's made and is seldom
performed by this office.

"The usual application of Section
6357 is an area where the shoreline
configuration has been substantially
altered by works of man. In such cases
the ordinary high water mark is located
in the position it last occupied under
natural conditions. Notwithstanding the
foregoing discussion, it does sometimes
become necessary to locate the
instantaneous ordinary high water mark
in natural areas. The procedure used by
this office is to locate a" --

Well, and so forth. The line that -- and the
manner that we did in February of this year. It says, "This
office," and this -- this is a fact which continues -- this
was a fact then and it continues to be a fact today, "This
office does not have a full-time surveying party and lacks
the resources necessary to conduct a field survey of the
subject property." Those were the circumstances concerning
the information available to us.
Now, when we -- on this particular parcel when we received the photographs, when we conducted the -- had the expert opinion of Mr. Uzez in the litigation involving the Coastal Commission and this parcel, his expert opinion as to the location of the line, we then conducted an on-the-site survey, we were given, as I say, anecdotal photographs showing the existence of the -- of what appeared to be sovereign waters over the proposed site. We then came to the conclusion that there was substantial evidence indicating that a significant part of the time that the project would be on sovereign lands.

This is not a case, as Mr. Stacey argued, of permitting a person to do -- a private owner to do with what he wants with his own lands. What they're trying to do is to -- he's seeking is to allow a private developer to use state lands for his development.

Now, this is the way we -- this agency has and is operating. It is not a change of policy. Mr. Stacey's quarrel with this agency, with the Attorney General, with the Coastal Commission and other state agencies, is over the law. His remedy is not, I respectfully suggest, to this Commission, but to the courts, a forum not unfamiliar to him on this and other matters.

MR. FORAN: Well, Mr. Chairman --

CHAIRMAN McCarthy: Mr. Foran.
MR. FORAN: -- it seems to me that that sort of begs the question, you assert that there is a title -- state title involved and then you proceed from that on this particular type of property. I don't know how many pieces of property are on beaches and coasts up and down the state, but if this were to prevail and everyone were to -- the title companies I think would go crazy for one thing because every -- there would be a cloud on every title in the state if you adopt this rule, which apparently has never been asserted -- I don't know. Has it ever been asserted officially by this body other than through the statement that Mr. Warren has made?

This is the point, and this is the point that I was saying it brings into the question the valuation of all of the properties that I was referring to at all. It is a -- it's certainly a new direction for the State Lands Commission to move based upon this particular statement that you haven't even applied to other property, and it will, of course, I assume, then apply to ever other piece of beach property in the State of California. I think there's about 25 percent of the coastal beach property that has not yet been developed and would make it worthless.

MALE VOICE: What is new? What are you saying is a new policy departure?

MR. STACEY: If I might -- it's been a defense of
the claim that the mean high tide line is ambulatory. I
heard nothing about the navigational servitude asserted
against my client and nowhere else.

CHAIRMAN McCARTHY: May I suggest, to stay on
track, if we could just keep on the first point.

MR. STACEY: All right. The departure --

CHAIRMAN McCARTHY: We can get to that later.

MALE VOICE: What is the departure?

MR. STACEY: I believe the departure has been to
claim that wherever the mean high tide line might exist
despite the forces that might have produced it. And
evulsion is not an observation of some atmospheric activity.
Evulsion is the rapid depletion of a bank. And whether
there happened to be an atmospheric activity that justifies
that appalachian hundred year storm that caused it or not, I
think there is little question that there was a rapid
depletion of the sand off this beach as a result of whatever
the ocean was doing in February of this year.

There is a difference of fact, and I believe that
this is the first occasion where your agency has gone out to
assert a wintermost severe line. In the study submitted to
you with regard to Mr. Bachman's house by Mr. Gad, he
describes, and this is another study which is relied on, he
describes the erosive nature of the beach.

The findings of the study indicate that the
present condition of the beach exhibits the most extreme erosion that is found in the historical survey archives. "This eroded beach condition was caused by wave action during the recent winter season during which storm occurrence was both frequent and intense." That was not our expert's conclusion, that was Mr. Philibosian's expert's conclusion. That I think is a difference in that the state is reaching beyond normal beach activity to claim state lands in areas that are exposed to the tides only by extraordinary occurrences.

And whether we label them with some meteorological label like 100 year storm, it doesn't alter the facts that the sand disappeared very fast and it came back again a few months later.

MR. WARREN: Mr. Stacey misstates our position. Again, we are not claiming the line of demarkation between sovereign land and privately-owned land to be the landward most under severe storm erosive evulsive condition. That's not what we're claiming. He insists that we are. We're claiming that the sovereign -- the line is an ambulatory line moving on a seasonal basis from summer to winter. We don't talk about severe 100-year storms or severe erosive conditions or evulsions. We're not talking about that at all. We're just talking about ordinary seasonal variations of -- well, of the point of contact with the land and the
mean high tide line.

CHAIRMAN McCarthy: And the staff disputes Mr. Stacey's contention that in February the line where we found it to be was the result of extreme evulsive activity.

MR. WARREN: Yes, we dispute that. In his communications to you and to us he's contended that 1990 -- that the mean high tide line measurement we took at that point in time was the result of severe storms. We dispute that.

MR. STACEY: 100-year storm. Yeah.

MR. WARREN: And we checked with weather experts and have been assured that no such unusual conditions existed with respect to tidal action on the coast in the winter of 1992-1993.

CHAIRMAN McCarthy: And weren't there also photographs submitted to the Commission from property owners at a prior point before the storms?

MR. WARREN: Yes.

CHAIRMAN McCarthy: And those photographs indicated what?

MALE VOICE: There's quite a few that have been given to us over the years. The most recent ones last October indicated that -- and along with letters from people who had used the property in the vicinity testified to the fact that there were a number of recreational vessels that
were on the beach, that the navigable waters -- not a storm, there was no storm during the October 25th and 26th photographs that we have that we can show you.

It was simply a higher tide, and I think that's an important thing to talk about because Mr. Stacey continually asserts this wave rushup -- uprush and believes that that is what the staff of the Commission is asserting are navigable waters, when, in fact, the mean high tide line, as he points out in some of his correspondence, 50 percent of the time the high tide exceeds the mean high tide.

So 50 percent of the high tides, not wave uprush but the elevation of the ocean, exceeds high tide, and those waters are clearly navigable. They're not wave uprush, they're not this water crashing up on the beach. So the photographs of October when there were no storms show you what a higher tide does to the beach with no storm activity.

There's a few other things. Mr. Weiss in his statements to you about the number of mean high tide line surveys that he relied upon, he was only able to give you two dates, July of 1932 -- excuse me, he gave you several dates, July of '32, August of '51, April of '90, September '92 and July '93. What he fails to do is tell you that -- what four of the months were.

He also fails to mention that when the staff of the Commission requested copies of these surveys or sources
for these surveys, other than the July '32 subdivision map, we were not presented with any of that evidence. We don't know where he came up with the evidence. We certainly don't have any copies of it. We believe what in fact he's talking about is surveys on other pieces of property that they tried to use to try and argue applied somehow to this beach.

CHAIRMAN McCARTHY: Do you have those surveys, Mr. Stacey?

MR. STACEY: I don't know if Mr. Weiss has brought those surveys with him. But there are indication -- five of the surveys are immediate field surveys, four of the surveys are extrapolations from surveys from either side.

MALE VOICE: Now, if he's counting the July 1993 survey that they conducted yesterday --

MR. STACEY: Yes.

MALE VOICE: -- it is possible that there's three for the last 60 some years. Your Commission was forced to rely on 60-year-old surveys in this location until the evidence was presented to us last fall based on the Uzez study. We've asked for copies of the '51 and those other surveys and have not been given those. Even Mr. Weiss himself states that the winter period is generally considered between November and April.

The evidence that we've been presented by Mr. Stacey over the last few months has no evidence of any
surveys during that period of time, a six-month period of
any year in the last 100 years. So that's our concern is
that we needed evidence to show what a typical beach looked
like throughout the year and we believe we have that
evidence now.

CHAIRMAN MCCARTHY: May I -- Mr. Philibosian has
been waiting patiently to testify.

Mr. Foran, Mr. Stacey, we'll give you ample time
to respond to anything that's being said here and to make
any points that you'd like.

Mr. Philibosian, would you like to join us up
here? You can sit on this side if you want so everybody can
stay in place.

MR. PHILIBOSIAN: Thank you. Chairman McCarthy,
Commissioner Davis, Commissioner Stancell, I'm Robert
Philibosian, I'm an attorney and I represent the Save
Lechuza Beach Committee. I appreciate very much the
Commission's permitting us to speak at this particular
meeting. I'm not calling it a hearing, I'm not calling it
an appeal, that's apparently what Mr. Stacey seems to want
to have here and I think we should get that clear.

For the record I will object to this proceeding.
It has no basis in law. There is no recommendation before
the Commission from staff, although Mr. Stacey has used the
words to the effect that if this Commission adopts the staff
recommendations then certain consequences will follow, there
is no recommendation. There is nothing for this Commission
to adopt at this particular time.

CHAIRMAN McCARTHY: Can I interrupt you right
there?

MR. PHILIBOSIAN: Yes, sir.

CHAIRMAN McCARTHY: Do we challenge that or do we
accept that as -- what are we doing here?

MALE VOICE: We are, at the request of Mr. Stacey,
listening to his version of the proceedings. The Commission
has the authority to direct staff in any direction it so
chooses.

CHAIRMAN McCARTHY: What's the issue before us
besides indulging Mr. Stacey, which we're happy to do
because I'm only on 62 other boards. I've got nothing else
to do. But --

MALE VOICE: He's simply --

CHAIRMAN McCARTHY: I don't mean to be facetious.
But is there an issue before us we're supposed to decide
something?

MALE VOICE: No.

MALE VOICE: No.

MALE VOICE: I think the relevance is that Mr.
Warren sent a letter to the California Coastal Commission
and Mr. Stacey and Mr. Foran are here asserting that that
letter had some impact on the fourth denial of the California Coastal Commission.

CHAIRMAN McCARTHY: But isn't that something the Coastal Commission can speak to? I mean how do we know what --

MALE VOICE: Well, I think that they feel that your Executive Officer is wrong and they're trying to get this Commission to correct Executive Officer in what is alleged to be new policy.

MALE VOICE: Well, there's an assertion of title that the Coastal Commission is relying upon to deny the application before the Coastal Commission. And you're the determiners of the title as far as state lands are concerned.

COMMISSIONER STANCELL: But weren't there three other occasions, at least three, where the Coastal Commission denied the --

MALE VOICE: But I don't think they denied it on the question of title. I wasn't there, I could be wrong, but somebody else can --

COMMISSIONER STANCELL: That's what I'm trying to ascertain. What was the basis for the other denials?

MR. STACEY: At the time of the original three decisions we had a letter from the State Lands Commission virtually identical to these other 82 that there were, in
their records, no state lands involved in this construction and -- with the caveat that this was not a final determination, similar to what Mr. Warren had read to you.

And the Commission in each of those occasions on other grounds denied but chose to reconsider those denials and to accept by stipulation with Mr. Kaufman a remand of the nine cases I had presently at that time in litigation, all to be consolidated together for a final decision, which became the fourth decision in which I believe the evidence provided by your Executive Director or his position was the most material aspect in the Commission's decision.

CHAIRMAN McCARTHY: We should let Mr. Philibosian proceed with his testimony.

MR. PHILIBOSIAN: Thank you, Chairman McCarthy. Having --

CHAIRMAN McCARTHY: I must say I'm not -- I have a lot of respect for my staff, but I'm not satisfied what we're doing here either. So besides --

MR. PHILIBOSIAN: I'm only here because Mr. Stacey is here and has brought Senator Foran with him and some other high-powered lobbyists. I'm only here to speak on behalf of the people who have consistently opposed this project through many iterations before the Coastal Commission and try to set the record straight as to what's going on here and what the actual history is. To that
extent I will once again, and then I'll drop it, reiterate
my objection to the proceeding because there's nothing
before this Commission.

Simply I think the mechanism is that Mr. Stacey is
appearing here in the public testimony portion of your
hearing when which you allow any member of the public to
come forward and talk about any issue that may have some
potential relevance to the State Lands Commission. What
he's seeking to do is to have this Commission reverse the
staff determination. I don't think there's a mechanism for
doing that. Having said that I'd like to address the issues
that are before you.

I brought some photographs of the beach if I may
distribute these.

(Pause.)

MR. PHILIBOSIAN: Just so we can bring this issue
to life a little bit, Commissioners, this is Lechuza Beach,
primarily the westerly end. These photographs were taken
during nonstorm conditions. These are normal kinds -- in
fact, they're low surf conditions. The red stakes that you
see in the foreground of some of these photographs are the
stakes placed there by Mr. Haney's people which mark his
purported string line. You can see quite clearly that the
surf is right in the midst of those stakes.

As also to the navigational easement issues, if I
may jump to that issue, although it's a bit out of the sequential order, you can see that there are water craft right there on the beach. And I think the reason, from my familiarity with that beach situation, that the staff of the State Lands Commission address the navigable easement issues with regard to Lechuza Villas property and did not address them with regard to Bachman property is that there are no water craft that use the beach in front of the Bachman property or any of the properties at the easterly end of the beach. The water craft are at the westerly end of the beach and have been using that beach for many, many years.

CHAIRMAN McCARTHY: Mr. Philibosian, what was the date which the photos with the sticks of the property owner up here in --

MR. PHILIBOSIAN: I don't have that precise date, Commissioner -- Chairman McCarthy. They were during the winter months and taken at different times. Winter of 1991-1992. I don't have the precise dates of those photographs. But I don't think the precise dates are as relevant as just giving you a picture of the situation. And also so that you know what we're talking about in terms of proposed development, and if you look at the photograph that's at the lower right-hand portion of the sheet you will see a coastal bluff there with some cypress trees atop the bluff.

The westerly edge of Sea Level Drive terminates at
the top of that bluff, and what the applicant to the Coastal Commission, Mr. Haney, who's here today, was proposing to do is to bring a road down from that bluff to the level sand on the beach and then extend it eastward to hook up with the existing eastern end -- I'm sorry, hook up with the existing westerly end of Sea Level Drive. Sea Level Drive terminates at the bluff that you see at the westerly end and terminates at an easterly end which is not in these photographs. So he is proposing to build a road to access the 16 residences which he proposes to build.

That road would require a rock revetment. It is that rock revetment and road, Commissioners, which form the primary reason for the three denials by the Coastal Commission of the applicant's request for permits. During those three denials before the state boundary issue was ever raised, the Coastal Commission based its conclusions on numerous reasons, the most prominent of which was the fact that the rock revetment was not being placed there to protect existing structures and was not for an in-fill development, therefore violative of the Coastal Act.

There were other reasons which are detailed in my letter to this Commission that were given by the Coastal Commission.

Now, how did this issue arise? The issue of the state boundary only arose when the applicant requested a
reconsideration following the third denial, and these
denials took place over a two-year period. The applicant
had submitted this project in various configurations, and
when his last denial was received he then requested
reconsideration. The Coastal Commission at the suggestion
of their staff granted reconsideration and one of the
reasons articulated for the granting of reconsideration was
the then existence of the Lucas case, which has been
referred to here by Mr. Stacey.

At that time the staff then entered into a
reexamination of their earlier recommendations to the
Commission and the Attorney General's Office as counsel to
the Commission apparently made a determination, and Mr.
Kaufman is here and can speak to that issue if the
Commission wishes to ask. The Attorney General's Office
then retained the services of Mr. Uzez, who is a former
chief surveyor for the State Lands Commission, he was
retained and he conducted the study which has been referred
to here. It was only after that request for reconsideration
by Mr. Haney and Mr. Stacey that this issue arose at all.

During the course of the reconsideration hearing
the Coastal Commission again reviewed all of the previous
recommendations from staff which asserted numerous reasons
other than the high tide line issue for denying the project.
The California Coastal Commission ultimately denied the
project on reconsideration and they gave as their reasons all the reasons which staff had presented to them.

In fact, the Chairman of the Coastal Commission, Mr. Thomas Gwen, stated at the conclusion of the hearing, and I've enclosed his transcript for you, that regardless, and I'll paraphrase his statements, regardless of the mean high tide line issues, he said that the necessity for a shoreline protective device would be required and that under the Coastal Act such a shoreline device would not be appropriate for the various reasons.

So far from Mr. Stacey's assertion that the mean high tide line issue was the basis for the conclusion by the California Coastal Commission to deny this project, this project was denied on three occasions without any evidence on mean high tide line whatsoever and was finally denied on reconsideration on many issues which included as only one of those the mean high tide line issue.

The applicant has now filed an action in the Superior Court for writ of mandate and complaint against the California Coastal Commission. I understand that that action is proceeding forward, and that's really the appropriate place to test all of these particular issues.

What we have here before this Commission really, as I said, is a request for the Commissioners to change what the staff has determined on a technical basis. This is not
a policy issue before this Commission, this is a technical
determination and I don't think it's appropriate for the
Commission to be, in effect, second-guessing its staff on
technical issues.

There have been extensive technical reports which
have been prepared and have been viewed and examined by the
staff. One of those was the Uzez report. The other was the
Gad report, which to correct Mr. Stacey is not my report.
That's Mr. Bachman's report. Mr. Bachman, as I understand
it, obtained that report because he was told by State Lands
Commission staff that he needed to establish clearly that
the survey pertaining to the Lechuza Villas property would
not impact him. He obtained the report.

The report indicated that Mr. Bachman's property
would not infringe on state lands, but as part of the
comparison which had started with a Coastal Commission
assertion of a potential change circumstances, that survey
also reviewed the Lechuza Villas West property and
interestingly enough came to the same conclusion that Mr.
Uzez came to.

Now, Mr. Uzez' methods were to examine
photographs, State Lands Commission staff did an on-site
survey, Mr. Gad did on-site surveys but also examined
several surveys that had been conducted over the course of
many years by various county and state and federal agencies.
Mr. Gad's conclusion based on that historical research was that Mr. Uzez' conclusions were correct. So far from just the photographic evidence that's before you, you also have before you the Gad report, which had been submitted to your staff as part of the Bachman situation.

Further, I think it's important for this Commission to note the statement from Mr. Uzez commenting on Mr. Weiss' assertions about the inaccuracies of Mr. Uzez' report, and I'll quote from a letter dated March 3, 1993 from Mr. Uzez to the staff of the State Lands Commission. I'll just quote one sentence. It says, "Mr. Weiss first misstates the scales of the aerial photographs used in my report and then compounds the error by incorrectly reporting the capabilities of measuring on photographs."

And I don't think, again, we should be in this battle of technicalities before this Commission. However, since Mr. Weiss has made these assertions about Mr. Uzez I think it's only appropriate to point out Mr. Uzez' response to them.

As to the history of this situation, I think it's also important for this Commission to understand that Mr. Haney and his successor, Lechuza Villas West, of which he is a partner, acquired this property in January of 1991. In fact, they acquired the property on the same day, January 10th, that the Coastal Commission issued its first
denial of the application.

This is not a historical property owner seeking to
develop his property. This is a fairly recent acquisition
from the historical property owner which was the Adamson
family. The Adamson family owns a lot of property in that
area. They owned this particular beach.

There had been, prior to this acquisition by Mr.
Haney and his partners, an action filed by people who live
in that tract over prescriptive easements and rights to use
the beach. The Adamson family -- or the Adamson company, I
should say, was a defendant in that action. They sold the
property to Mr. Haney who in turn sold it to the partnership
and they sold it by means of a quitclaim deed, exempting any
potential liability for such issues as this.

Now the sale price of the property was
approximately $2 million. My clients, the Save Lechuza
Beach Committee, offered to Mr. Haney at the time and
offered to him on several subsequent occasions the sum of
$2.1 million. Initially of course a 5 percent profit on his
investment. He declined those offers on several occasions.
So this was a situation where far from trying to deprive
someone of his property, this particular group of people in
the area sought to purchase the property on the condition
that they would deed restrict that property in perpetuity
and have it available as beach for the public.
In fact, the public has used the beach, Commissioners, historically as long as that beach has been there. That finding was made by the Coastal Commission in the course of their hearings and the Coastal Commission said that there was ample evidence of prescriptive rights on that particular beach. The matter still is in controversy between the Malibu Homeowners Association, whom I do not represent, and the Lechuza Villas West partnership.

The fact of the matter is that that beach has been in continuous use by the public for recreational purposes and navigation purposes for many, many years, predating the acquisition by Mr. Haney and Lechuza Villas West property. So when Mr. Stacey points out to the Commission in his communications to you that he's attempted to settle this matter by offering to the staff of the State Lands Commission a scheme by which he would allow the public to use certain footage of property between his string line and the -- what he supposed the mean high tide line to be, that offer really is specious, Commissioners, because the public uses the beach anyway.

And if this action ever were to go to conclusion based on what I've seen so far and based on what the California Coastal Commission has said, it's pretty apparent that the public prescriptive rights would prevail over whatever interest Mr. Haney bought in that property.
I think it's important for this Commission to know that Mr. Haney entered into that agreement based on a quitclaim deed. It was a speculative venture on his part. I don't in any way disparage speculation by developers. I've represented many developers who engage in speculation. At the same time I think it is wrong to any way cast the situation as a property owner trying to simply develop his property. This is not a case where someone has owned property for many, many years and now is in a position to develop it with a single dwelling to be used for their residential purposes.

Mr. Haney entered into this purchase knowing full well of the disabilities involved with this particular piece of property, and in fact in evidence presented to the Coastal Commission by its staff, their Executive Director, Mr. Douglas, went into some detail in pointing out the extensive conversations that he had with Mr. Haney showing him and pointing out to him all the difficulties that he would have based on violations of the Coastal Act that would be produced by the development.

Commissioners, I believe that I have summarized the historical situation and hopefully have put in perspective what the -- what Mr. Haney is requesting of this particular -- requesting of this Commission at this particular time. I believe that all of his rights have been
fully protected by the procedures before the California Coastal Commission. He has filed a Superior Court action against the California Coastal Commission. That action will take into account all of these issues and he will have a full opportunity to litigate those issues.

As your own staff has pointed out, that if he wishes he can file a quiet title action and in some way have a judicial determination of the action which your staff has taken in this particular situation. It is I think a mischaracterization of the situation for Mr. Stacey, as he said to you in his concluding remarks, that Mr. Haney seeks only to make use of his property as many others. He is not seeking to make use of his property as many others, he is seeking to put in a 16 residence development on a pocket beach which has a questionable title both as to the state sovereign lands and as to the right to use because of public prescriptive easements.

These were issues and these were conditions that he was fully aware of when he purchased the property (tape ran out) --

(Tape change.)

MR. PHILIBOSIAN: -- most of this property in January 10 of 1991, those should have been dispelled by the previous conversations which he had with staff of the Coastal Commission.
I'd be happy to answer any questions that you
Commissioners may have.

COMMISSIONER DAVIS: Just a couple questions. Do
you accept or quarrel with Mr. Stacey's notion that we are
breaking new ground here, that we are -- this is a new legal
principle that we're adopting?

MR. PHILIBOSIAN: Commissioner Davis, I do not
have the length of contact and experience, nor do I have the
expertise in State Lands Commission matters which your own
staff has, and your own staff has expressed to you that this
is not breaking with any policy or tradition of this
Commission. I happen to agree with that statement, but I
would be presumptuous to say something to you on my own
knowledge, which is better founded in the knowledge of your
own staff.

COMMISSIONER DAVIS: And just to reiterate what
you said before, you view this as a technical determination,
one which is subject to expert determination as opposed to
policy making (indiscernible) Board.

MR. PHILIBOSIAN: Yes, I do, Commissioner Davis.
And I believe that further evidence of that is really
supplied by Mr. Stacey and Mr. Weiss themselves when they
bring to you all of the technical arguments that they have
sought to lay at your doorstep this particular afternoon.
These arguments are better made to staff, and if they don't
like the staff determination there is a procedure for them
in the Superior Court.

COMMISSIONER DAVIS: I don't have any other
questions.

CHAIRMAN McCARTHY: Thank you, Mr. Philibosian.

MR. PHILIBOSIAN: Thank you.

MR. FORAN: Mr. Chairman, could I just make a
point?

CHAIRMAN McCARTHY: Certainly. Mr. Foran.

MR. FORAN: I have no -- you know, I am sure that
Mr. Philibosian has all of the history and all of the events
and things like that, but that's not what the issue is
before this body, I don't think. The issue before this body
is that the staff made a determination as to where the state
owns title to beach property. And if you take no action or
do nothing then that staff will be confirmed by the State
Lands Commission and it will, in fact, impact properties up
and down the state, as I indicated in my opening remarks.
So it is -- if it's a reversal of a staff determination, it
is a determination.

CHAIRMAN McCARTHY: Let me ask you then. How can
you say that, Mr. Foran? We're only talking about a survey
on a limited part of the beach. How can that affect
properties up and down the State of California?

MR. FORAN: Because if you say that the mean high
tide line is wherever the high tide -- the water approaches even for a short period of time in the winter, you're making a determination as far as state property in Mendocino County. You're finding a state title as a particular line, which we say is not existing California law and is certainly not in conformity with the Lucas decision which only allows -- that's why you're here, right, basically because the State Coastal Commission is denying it on the grounds of state title.

You are the determiners of state title. And if you confirm the staff decision you're doing that. You can deny -- I mean you can say, "Don't do what the staff says," you go back to the Coastal Commission, they go back and they get denied again, they go to court. Fine. Good. All fair. That's okay. But at least you as the State Lands Commission haven't made what we submit is a new determination based upon the mean high tide line or on navigational servitude, if that's included in the decision as well. That is a new theory. Unless you have a written decision somewhere along the line that you have used these definitions for properties -- determining state title to property, beach property, in previous decisions. And I don't know if that exists.

CHAIRMAN McCarthy: A response to that, Jan?

DEPUTY ATTORNEY GENERAL STEVENS: Well, basically we believe that (inaudible) is the issue here. (Inaudible)
to determine where the high tide line occurs (inaudible) and
if the land consists of loose sand easily removed
(inaudible) variable decision in relation to (inaudible).

With respect to the impact on titles statewide we have been this before (inaudible) clearly (inaudible) body of water (inaudible) unsettled throughout the state hitherto (inaudible) springboard (inaudible) low water (inaudible). Second time was in (inaudible) versus State of Mississippi (inaudible) State of Mississippi and the State of California we have a stating of sovereign rights to all waters, all land subject to (inaudible) irrespective of that (inaudible) title of waters (inaudible) ambiguous (inaudible) this was not settled (inaudible) as well as in the state's (inaudible).

I think we should also respect (inaudible) be the first to have been handed this trouble and this language, and I don't think it represents (inaudible). (Inaudible) case involved an effort to enjoin the landowners (inaudible) in this context (inaudible) went to the appellate court of which felt that an effort could be made to determine (inaudible). I think expressly stated no effort was made by the parties to determine whether the (inaudible) throughout here was (inaudible) distance. It was the same distance. This might be a basis for (inaudible) proposed by Mr. Stacey.
This effort should be made (inaudible) before
(inaudible) we recognize the almost mathematical (inaudible)
but perhaps greater certainty should be possible
(inaudible). If not (inaudible) injunction. On re-trial
the evidence showed that there were identical (inaudible)
any difference. So it was impossible to do what (inaudible)
suggested had to be done. For that reason (inaudible).

MR. STACEY: Mr. Chairman, I'm not going to
reiterate Greatly and Kent. Kent was clear that ownership
boundaries do not change except little by little and by
imperceptible degrees and that a change of 80 feet in a year
was by definition not little by little, and those are the
facts we have here. The staff's advise to you in conclusion
is that if tomorrow the boundary moves ten feet then state
tidelands would move ten feet.

And if it moves toward the ocean -- the
extraordinary effect of this is that when the beach is the
nicest for the public to use it it has the least rights to
make use of it because the boundary's extended out in the
summer toward the ocean and in the winter when they're most
critical about not building a structure that would interfere
with it, when it's cloudy and raining and stormy, that's
when the public has the use of it.

I'd like to only respond to two items that Mr.
Philibosian said. First, I think it makes little difference
whether my client's a historical property owner. He didn't own the property, and the Adamson companies were here who'd owned it since 1890. Is somehow their rights different from what my client's rights are to be able to make use of his property? Does the tide line change because he's owned it two years and they owned it 100? I think not.

So that fact, other than it may be a nice anecdote to suggest that you have someone who is -- should have known maybe that this was going to be a tough piece of property to deal with doesn't change how the state must deal with the property owner.

And, second, I still get some focus on this navigational servitude. Mr. Philibosian said, "Well, there aren't any boats down near Mr. Bachman's house." But the state law cited by Mr. Warren isn't is it navigated, but is it capable of navigation. And for every photograph they have of the water rushing across my client's property the staff had photographs -- Mr. Bachman has an existing house, sits right there next to where he's going to build his current house, photographs of whether water rushes up all the way underneath his house. Equally as capable of being navigated.

But Mr. Trout's letter to the Coastal Commission doesn't even mention this concept of navigational servitude, and it applies when the high tides go above those mean high
tides, as Mr. Fasom indicated, even if the mean high tide line didn't encroach, the higher tides come underneath Mr. Bachman's house by the analysis that they have evidence of. My belief, and I will, you know, I will remain steadfast in this belief, is that this is part of an overall effort to assert title in an area where title is unjustified. You don't go to court and claim title. We're supposed to? We had a deed that says we own property to this 1932 high tide line. Quitclaim or not, we have a deed from the people who owned it since 1890.

MALE VOICE: Do you have title insurance?

MR. STACEY: We're supposed to sue the state with regard to that when the state asserts they have title on our property? Why doesn't the state sue us if they're making the claim and take the burden of proof?

Be that as it may, I think that the state is indeed stepping long beyond -- when you ask, "What are you here for?" it is indeed what Mr. Philibosian said. At the conclusion of this hearing I wanted you to make a motion directing Mr. Warren to rescind his letter and write a different letter that would say the state asserts no claim to this property.

I don't know that you will or will not do that, but that was my object in writing my objections to Mr. Warren. I think I've been fairly forthright with him in the
positions that I have taken as to what I believe my client's position is and I don't think we've hidden anything. That is the purpose for bringing this matter before you here today.

We had proposed a compromise, indeed. We proposed a compromise that said, look, (inaudible) 90 percent of the time the tide's out here where 50 to 60 feet of beach isn't (inaudible) and where we live in (inaudible) the state would assure us of the security of our tide line, (inaudible) string line, we went (inaudible) property beyond that because by this ambulatory line the public uses the right to make use of the beach at the time when the right to use the beach is of most importance and value to the public in the summer months. That was the compromise.

In my request to you I suggested that Mr. Warren was wrong to have rejected that compromise. I don't know if you're prepared to accepted it or at what point it might be an acceptable compromise, but we'll lay that one on the table. It'll probably be there for some time. But I think certainly you should consider is the public served by the assertion of Mr. Warren's policies and the rejection of that as a compromise.

I think Mr. Foran has perhaps some closing comment with regard to what we would like to see occur as a result of this proceeding.
MR. FORAN: Well, basically what the recommendation that we would make before this -- again, we assert that there is a major title -- state title issue involved here which your action will -- if you take no action then you confirm the staff and confirm what we believe to be a change in state policy. So we would request that you accept the State Lands policy that the average location of the mean high tide, which as of record is the ordinary high water mark, Civil Code Section 830, based upon field surveys of beaches which have not been affected by major storm activities.

And, secondly, we would request that you not pursue this policy of so-called navigational servitude that has been alluded to before.

And, finally, if you wish to avoid the legal consequences of those two decisions, you could adopt or recommend or instruct on the compromise solution, which as it was pointed out by Mr. Stacey would benefit the people who walk along the beaches or use the dry part during the bulk of the year when it's usable, not in the winter storms, and that would provide I think the public with more access to the beaches than would denying the compromise that was suggested.

CHAIRMAN McCarthy: Thank you.

Any final comments by the staff?
MR. WARREN: Mr. Chairman, just one brief comment perhaps on a minor point but it's one in which Mr. Stacey continues to refer. First, let this be clear, that it's staff's position on this particular parcel that the mean high tide line itself is the determining factor. We are not necessarily relying on navigational easement, although that is an argument we believe should be made in this instance for a number of reasons, but it is not the determinative issue.

Mr. Stacey said that we did not -- that Mr. Trout in his letter to the Coastal Commission dated May 21 concerning the Bachman property did not mention the navigational servitude claim. That is not correct. On page two of his letter on the third paragraph Mr. Trout wrote, "Similarly, based on information of which was are now aware, we are not able to say whether public recreational rights would be adversely affected by the proposed Bachman residence. The precise -- in an extent -- the public recreational rights in ocean waters has not been determined by the court." That is our position.

Public recreational rights is a term which assumes navigational right. So navigational rights are what was included in the use by Mr. Trout of that phrase. So to say that we did not discuss this in the letter concerning Mr. Bachman's property to the Coastal Commission is a
mischaracterization of the truth.

Insofar as what Mr. Foran suggests you do, I just urge this Commission to -- if you're inclined to give any credence whatsoever to that proposal, bear in mind that it would have severe, indeed wrenching effects on the extent of sovereign lands in the State of California involving title and navigable water. I'm not at all sure that in this proceeding such a momentous historical decision should be made.

Thank you.

CHAIRMAN McCarthy: No further comments?

MR. WARREN: No further comments.

CHAIRMAN McCarthy: We've heard a great deal from all sides this afternoon. I'd like to suggest to my two fellow Commissioners that we reflect on all the material we've heard, the testimony we've heard. If any one of you, Mr. Stacey, Mr. Foran and Mr. Philibosian, and our staff want to counter any comments made today, if you don't think you've had an opportunity to do so, I'll give you the opportunity. I think that -- we'll pole the Commission and give a response within seven days as to what action if any we will take upon this.

I'm assuming there's no limit on our ability to do that given the informal nature of this hearing.

MALE VOICE: (Inaudible.)
COMMISSIONER DAVIS: Isn't the Commission meeting again this month?

MALE VOICE: The notice (inaudible) has already gone out (inaudible).

COMMISSIONER DAVIS: Well, but can't we just continue this as an item on the 29th?

MALE VOICE: No. It has to be re-noticed.

CHAIRMAN McCARTHY: So this was a Commission hearing we were not required to hold, therefore --

COMMISSIONER DAVIS: There's no staff recommendation in front of us.

CHAIRMAN McCARTHY: Would public notice requirements pertain to a meeting that we were not required to hold?

MALE VOICE: (Inaudible.)

MALE VOICE: Well, it is to the extent that you're now -- if you are contemplating taking action on the meeting, yes. That part is --

CHAIRMAN McCARTHY: I'm not suggesting what the Commission is going to do. It will make a statement in response to everything we've heard. It may be for no action, it may be for partial action. So I'm not attempting to imply in any sense any course of action. We've just heard an awful lot in the last couple of hours and I think the Commissioners want to try to digest this and make some
reasonable and fair decision on this.

MALE VOICE: Chairman, the notice that was sent out was to allow Mr. Stacey to address the Commission concerning certain property interests in Lechuza Beach. If the Commission would like to agendize an item relating to a position it wishes to take, it could direct the staff to do that with the ten days notice requirement.

CHAIRMAN McCARthy: That's fine. Is that acceptable?

MALE VOICE: I'm not quite sure what we're agreeing to do here.

MALE VOICE: Board can -- because this matter relates to the law as much as it certainly relates to the facts based on the assertions of Mr. Stacey, it can decide in Executive Session what position it wishes to take as to the law, assuming we're sued on this or the Commission wishes to take action.

CHAIRMAN McCarThy: So you're saying we can deal with it at the next closed session of this Commission?

MALE VOICE: Well, as to -- there is no -- pardon?

MALE VOICE: (Inaudible.)

MALE VOICE: Published notice. The Commission has sent out a notice already, I believe, to its next meeting.

CHAIRMAN McCarThy: It's ten days from now to our next meeting, right?
MALE VOICE: Right. Has it been sent out, mailed out?

MALE VOICE: Yes.

MALE VOICE: It's already been mailed.

CHAIRMAN McCarthy: Yeah, but can't we mail another one before the close of business today meeting the ten-day requirement?

MALE VOICE: Close of business is midnight.

CHAIRMAN McCarthy: Close of business is whenever we close for business. All the parties are here. Who's not here?

MALE VOICE: The question is whether it's technically feasible to get out a public notice and have -- and whether the staff exists to create such a notice and mail it to all the proper parties in the time.

CHAIRMAN McCarthy: Mr. Foran, will you stipulate that you won't object to the notice provision?

MR. FORAN: We would waive notice.

MALE VOICE: (Inaudible.)

MALE VOICE: Public notice.

MALE VOICE: (Inaudible.)

MALE VOICE: If it hadn't been already mailed I think that would be the case.

CHAIRMAN McCarthy: You could just add it --

MALE VOICE: Yeah. We could send it -- if we have
the ability to get out enough copies of it physically to produce such a thing and make the copies and stamp them and get them to the mail box. I'm just relying on the staff that has to do that and they're indicating there may be problems.

COMMISSIONER STANCELL: But in order for Mr. Stacey's client to proceed they need to go back to the Coastal Commission or have that --

MALE VOICE: They're in litigation with the Coastal Commission.

COMMISSIONER STANCELL: Litigation. So whatever we say here would not give them any kind of authority to proceed until that issue is resolved. So what's the urgency of having this besides your seven-day notice, what your thought is? I mean is there some real urgency that we have to, you know, address this in such a short time?

COMMISSIONER DAVIS: But then we have to meet in public, don't we, to make a decision?

MALE VOICE: Yeah. Absolutely.

COMMISSIONER DAVIS: So when are we meeting after July 29th?

MALE VOICE: Chairman McCarthy, if I may?

CHAIRMAN McCARTHY: And we're not talking about taking anymore testimony, we're talking about simply coming to whatever form of conclusion we want and announcing it.
COMMISSIONER DAVIS: And if we can't do that on July 29th what's the next opportunity?

MALE VOICE: There is no scheduled meeting, but whenever you would so choose.

MALE VOICE: We can hold a meeting whenever after that you want to set. You can set another meeting date at this time and we can schedule another meeting.

CHAIRMAN MCCARTHY: But I want to make it clear --

MALE VOICE: Chairman McCarthy --

CHAIRMAN MCCARTHY: -- we're not suggesting that we go over this ground again. I think we've heard ample testimony and I think now it's up to us just to try to digest this and reflect on this and then we'll decide what form of response we want to give.

MR. PHILIBOSIAN: Mr. McCarthy, if I may?

CHAIRMAN MCCARTHY: Mr. Philibosian.

MALE VOICE: Pardon me?

MR. PHILIBOSIAN: To respond to Commissioner Stancell's statement, the Coastal Commission has lost jurisdiction in this matter. They have held a reconsideration hearing, there is no provision under the law for them to do anything further with this particular matter no matter what decision the State Lands Commission comes to, if in fact the State Lands Commission does come to a decision.
Your decision may be to take no action and that's what I would urge, that this Commission take no action whatsoever. Anything that you do or don't do will have no bearing on the current action by the California Coastal Commission. There is no way that the matter can be once again reconsidered or reheard by them. That's it. They've lost jurisdiction.

MR. STACEY: It can be reheard whenever we make a reapplication to do it. The court can remand it to the Commission (indiscernible).

CHAIRMAN McCARTHY: (Indiscernible), Mr. Philibosian, were we to, and I don't know that we're going to, but were we to say that we disagree with the staff decision and we're not claiming title, why wouldn't that be a material change of position that would allow the Coastal Commission to reconsider this matter?

MR. PHILIBOSIAN: Because the reconsideration hearing has been held and it's finished, it's over with. There's no further -- you can't have a reconsideration of a reconsideration.

MALE VOICE: (Inaudible.)

MR. PHILIBOSIAN: Anything that's changed now is before the Superior Court.

MALE VOICE: Procedurally --

(Cross conversation.)
MR. PHILIBOSIAN: But that's probably beside the point anyway.

CHAIRMAN McCARTHY: We don't have to dwell on this.

MR. PHILIBOSIAN: I have no objection to the Commission setting down a date whenever the Commission decides it's appropriate to announce whatever it's decision is, to take no action or to take some action. I would urge no action.

CHAIRMAN McCARTHY: Mr. Warren, do we have a way in which we could make our decision and announce it on the 29th?

MR. WARREN: I know of none.

CHAIRMAN McCARTHY: How many people do you have to send notices out to on this matter?

MR. WARREN: (Inaudible.)

CHAIRMAN McCARTHY: Do you have anything planned for tonight?

MALE VOICE: (Inaudible.)

CHAIRMAN McCARTHY: Mr. Warren, can -- this hearing this afternoon that we were not obliged to grant is a public hearing with our recorder. I take it Mr. Stacey and Mr. Foran are up here to try to persuade us to amend or reverse the staff position on this. Now, beyond that, is this hearing usable in the pending lawsuit, the pending
litigation in any form on this issue?

MALE VOICE: I don't think the hearing is usable.
The result, should you take some different action would --
it is your action that is important as opposed to the
arguments and the facts that are laid out here.

CHAIRMAN McCARTHY: Nothing in this record could
be used -- nothing said in this record could be used in the
lawsuit?

MALE VOICE: Nothing today. Nothing that was said
today would be usable. That hearing, as Mr. Philibosian
indicated, is closed now.

CHAIRMAN McCARTHY: I'm not talking about the
hearing before the Coastal Commission, I'm talking about the
lawsuit in the Superior Court.

MALE VOICE: Right. That as well. Because the
lawsuit in the Superior Court is based on the administrative
record before the Commission, which is also closed. All
that evidence is done. Only the matters that appear -- that
were before the Commission at that time are usable.

(Asides.)

CHAIRMAN McCARTHY: I want to thank everyone who
appeared at this hearing this afternoon and gave ardent and
effective advocacy. It is the opinion of the majority of
this Commission that the Executive Officer has not changed
the previous policy of the Commission, so the Commission
takes no action to amend or to reverse the action taken by Mr. Warren based on the history of previous Commission actions and staff actions on behalf of the Commission.

That concludes the meeting. Thank you.

(Thereupon, at 4:20 p.m., the meeting was concluded.)
CERTIFICATION OF TRANSCRIPT

TITLE: State Lands Commission Meeting

NO. OF TAPES: 2

MEETING DATE: July 19, 1993

I certify that the above-described electronic recording was accurately transcribed by me and constitutes a true, complete and accurate transcription of the aforementioned proceedings.

SIGNED: Kim Wellman

DATED: 3/29/95